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# Supreme Court of the United States

OCTOBER TERM, 1966

No. ~~1169~~ 70

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ALITALIA-LINEE AEREE ITALIANE, S.p.A.,

*Petitioner,*

—v.—

JOHN LISI, *et al.*,

*Respondents.*

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## APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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## APPENDIX A

**Convention for the Unification of Certain Rules Relating to International Transportation by Air, Concluded at Warsaw, October 12, 1929. 49 *Stat.* 3000, *et seq.*; T. S. 876.**

*Article Premier.*

(1) La présente Convention s'applique à tout transport international de personnes, bagages ou marchandises, effectué par áeronef contre rémunération. Elle s'applique également aux transports gratuits effectués par áeronef par une entreprise de transports áeriens.

*Article 1*

(1) This convention shall apply to all international transportation of persons, baggage, or goods performed by aircraft for hire. It shall apply equally to gratuitous transportation by aircraft performed by an air transportation enterprise.

(2) Est qualifié "transport international", au sens de la présente Convention, tout transport dans lequel, d'après les stipulations des parties, le point de départ et le point de destination, qu'il y ait ou non interruption de transport ou transbordement, sont situés soit sur le territoire de deux Hautes Parties Contractantes, soit sur le territoire d'une seule Haute Partie Contractante, si une escale est prévue dans un territoire soumis à la souveraineté, à la suzeraineté, au mandat ou à l'autorité d'une autre Puissance même non Contractante. Le transport sans une telle escale entre les territoires soumis à la souveraineté, à la suzeraineté, au mandat ou à l'autorité de la même Haute Partie Contractante n'est pas considéré comme international au sens de la présente Convention.

(2) For the purposes of this convention the expression "international transportation" shall mean any transportation in which, according to the contract made by the parties, the place of departure and the place of destination, whether or not there be a break in the transportation or a transshipment, are situated either within the territories of two High Contracting Parties, or within the territory of a single High Contracting Party, if there is an agreed stopping place within a territory subject to the sovereignty, suzerainty, mandate or authority of another power, even though that power is not a party to this convention. Transportation without such an agreed stopping place between territories subject to the sovereignty, suzerainty, mandate, or authority of the same High Contracting Party shall not be deemed to be international for the purposes of this convention.

(3) Le transport à exécuter par plusieurs transporteurs par air successifs est censé constituer pour l'application de cette Convention un transport unique lorsqu'il a été envisagé par les parties comme une seule opération, qu'il ait été conclu sous la forme d'un seul contrat ou d'une série de contrats et il ne perd pas son caractère international par le fait qu'un seul contrat ou une série de contrats doivent être exécutés intégralement dans un territoire soumis à la souveraineté, à la suzeraineté, au mandat ou à l'autorité d'une même Haute Partie Contractante. 49 *Stat.* 3001.

(3) Transportation to be performed by several successive air carriers shall be deemed, for the purposes of this convention, to be one undivided transportation, if it has

been regarded by the parties as a single operation, whether it has been agreed upon under the form of a single contract or of a series of contracts, and it shall not lose its international character merely because one contract or a series of contracts is to be performed entirely within a territory subject to the sovereignty, suzerainty, mandate, or authority of the same High Contracting Party. 49 *Stat.* 3014.

*Article 3.*

(1) Dans le transport de voyageurs, le transporteur est tenu de délivrer un billet de passage qui doit contenir les mentions suivantes:

a) le lieu et la date de l'émission;

b) les points de départ et de destination;

c) les arrêts prévus, sous réserve de la faculté pour le transporteur de stipuler qu'il pourra les modifier en cas de nécessité et sans que cette modification puisse faire perdre au transport son caractère international;

d) le nom et l'adresse du ou des transporteurs;

e) l'indication que le transport est soumis au régime de la responsabilité établi par la présente Convention.

*Article 3*

(1) For the transportation of passengers the carrier must deliver a passenger ticket which shall contain the following particulars:

(a) The place and date of issue;

(b) The place of departure and of destination;

(c) The agreed stopping places, provided that the carrier may reserve the right to alter the stopping places in case of necessity, and that if he exercises that right, the alteration shall not have the effect of depriving the transportation of its international character;

(d) The name and address of the carrier or carriers;

(e) A statement that the transportation is subject to the rules relating to liability established by this convention.

(2) L'absence, l'irrégularité ou la perte du billet n'affecte ni l'existence, ni la validité du contrat de transport, qui n'en sera pas moins soumis aux règles de la présente Convention. Toutefois si le transporteur accepte le voyageur sans qu'il ait été délivré un billet de passage, il n'aura pas le droit de se prévaloir des dispositions de cette Convention qui excluent ou limitent sa responsabilité. 49 *Stat.* 3001.

(2) The absence, irregularity, or loss of the passenger ticket shall not affect the existence or the validity of the contract of transportation, which shall none the less be subject to the rules of this convention. Nevertheless, if the carrier accepts a passenger without a passenger ticket having been delivered he shall not be entitled to avail himself of those provisions of this convention which exclude or limit his liability. 49 *Stat.* 3015.

*Article 4.*

(1) Dans le transport de bagages, autres que les menus objets personnels dont le voyageur conserve la garde, le transporteur est tenu de délivrer un bulletin de bagages.

*Appendix A*
*Warsaw Convention Rules*

*Article 4*

(1) For the transportation of baggage, other than small personal objects of which the passenger takes charge himself, the carrier must deliver a baggage check.

(2) Le bulletin de bagages est établi en deux exemplaires, l'un pour le voyageur, l'autre pour le transporteur.

(3) Il doit contenir les mentions suivantes:

a) le lieu et la date de l'émission;

b) les points de départ et de destination;

c) le nom et l'adresse du ou des transporteurs;

d) le numéro du billet de passage;

e) l'indication que la livraison des bagages est faite au porteur du bulletin;

f) le nombre et le poids des colis;

g) le montant de la valeur déclarée conformément à l'article 22 alinéa 2;

h) l'indication que le transport est soumis au régime de la responsabilité établi par la présente Convention.

(2) The baggage check shall be made out in duplicate, one part for the passenger and the other part for the carrier.

(3) The baggage check shall contain the following particulars:

(a) The place and date of issue;

(b) The place of departure and of destination;

(c) The name and address of the carrier or carriers;

(d) The number of the passenger ticket;

(e) A statement that delivery of the baggage will be made to the bearer of the baggage check;

(f) The number and weight of the packages;

(g) The amount of the value declared in accordance with article 22 (2);

(h) A statement that the transportation is subject to the rules relating to liability established by this convention.

(4) L'absence, l'irregularité ou la perte du bulletin n'affecte ni l'existence, ni la validité du contrat de transport que n'en sera pas moins soumis aux règles de la présente Convention. Toutefois si le transporteur accepte les bagages sans qu'il ait été délivré un bulletin ou si le bulletin ne contient pas les mentions indiquées sous les lettres d), f), h), le transporteur n'aura pas le droit de se prévaloir des dispositions de cette Convention qui excluent ou limitent sa responsabilité. 49 *Stat.* 3002.

(4) The absence, irregularity, or loss of the baggage check shall not affect the existence or the validity of the contract of transportation which shall none the less be subject to the rules of this convention. Nevertheless, if the carrier accepts baggage without a baggage check having been delivered, or if the baggage check does not contain the particulars set out at (d), (f), and (h) above, the carrier shall not be entitled to avail himself of those provisions of the convention which exclude or limit his liability. 49 *Stat.* 3015.

*Appendix A*
*Warsaw Convention Rules*

*Article 8.*

La lettre de transport áerien doit contenir les mentions suivantes:

a) le lieu où le document a été crée et la date à laquelle il a été établi;

b) les points de départ et de destination;

c) les arrêts prévus, sous réserve de la faculté, pour le transporteur, de stipuler qu'il pourra les modifier en cas de nécessité et sans que cette modification puisse faire perdre au transport son caractère international;

d) le nom et l'adresse de l'expéditeur;

e) le nom et l'adresse du premier transporteur;

f) le nom et l'adresse du destinataire, s'il y a lieu;

g) la nature de la marchandise;

h) le nombre, le mode d'emballage, les marques particulières ou les numéros des colis;

i) le poids, la quantité, le volume ou les dimensions de la marchandise;

j) l'état apparent de la marchandise et de l'emballage;

k) le prix du transport s'il est stipulé, la date et le lieu de paiement et la personne qui doit payer;

l) si l'envoi est fait contre remboursement, le prix des marchandises et, éventuellement, le montant des frais;

m) le montant de la valeur déclarée conformément à l'article 22, alinéa 2;

n) le nombre d'exemplaires de la lettre de transport áerien;

o) les documents transmis au transporteur pour accompagner la lettre de transport aérien;

p) le délai de transport et indication sommaire de la voie à suivre (*via*) s'ils ont été stipulés;

q) l'indication que le transport est soumis au régime de la responsabilité établi par la présente Convention. 49 *Stat.* 3003.

*Article 8*

The air waybill shall contain the following particulars:

(a) The place and date of its execution;

(b) The place of departure and of destination;

(c) The agreed stopping places, provided that the carrier may reserve the right to alter the stopping places in case of necessity, and that if he exercises that right the alteration shall not have the effect of depriving the transportation of its international character;

(d) The name and address of the consignor;

(e) The name and address of the first carrier;

(f) The name and address of the consignee, if the case so requires;

(g) The nature of the goods;

(h) The number of packages, the method of packing, and the particular marks or numbers upon them;

(i) The weight, the quantity, the volume, or dimensions of the goods;

(j) The apparent condition of the goods and of the packing;

(k) The freight, if it has been agreed upon, the date and place of payment, and the person who is to pay it;

(l) If the goods are sent for payment on delivery, the price of the goods; and, if the case so requires, the amount of the expenses incurred;

(m) The amount of the value declared in accordance with article 22(2);

(n) The number of parts of the air waybill;

(o) The documents handed to the carrier to accompany the air waybill;

(p) The time fixed for the completion of the transportation and a brief note of the route to be followed, if these matters have been agreed upon;

(q) A statement that the transportation is subject to the rules relating to liability established by this convention. 49 *Stat.* 3016.

*Article 9.*

Si le transporteur accepte des marchandises sans qu'il ait été établi une lettre de transport aérien, ou si celle-ci ne contient pas toutes les mentions indiquées par l'article 8 [a) à i) inclusivement et q)], le transporteur n'aura pas le droit de se prévaloir des dispositions de cette Convention qui excluent ou limitent sa responsabilité. 49 *Stat.* 3003.

*Article 9.*

If the carrier accepts goods without an air waybill having been made out, or if the air waybill does not contain all the particulars set out in article 8 (a) to (i), inclusive,

and (q), the carrier shall not be entitled to avail himself of the provisions of this convention which exclude or limit his liability. 49 *Stat.* 3019.

*Article 20.*

(1) Le transporteur n'est pas responsable s'il prouve que lui et ses préposés ont pris toutes les mesures nécessaires pour éviter le dommage ou qu'il leur était impossible de les prendre. 49 *Stat.* 3005.

*Article 20*

(1) The carrier shall not be liable if he proves that he and his agents have taken all necessary measures to avoid the damage or that it was impossible for him or them to take such measures. 49 *Stat.* 3019.

*Article 22.*

(1) Dans le transport des personnes, la responsabilité du transporteur envers chaque voyageur est limitée à la somme de cent vingt cinq mille francs. Dans le cas où, d'après la loi du tribunal saisi, l'indemnité peut être fixée sous forme de rente, le capital de la rente ne peut dépasser cette limite. Toutefois par une convention spéciale avec le transporteur, le voyageur pourra fixer une limite de responsabilité plus elevée.

*Article 22*

(1) In the transportation of passengers the liability of the carrier for each passenger shall be limited to the sum of 125,000 francs. Where, in accordance with the law of the court to which the case is submitted, damages may be awarded in the form of periodical payments, the

equivalent capital value of the said payments shall not exceed 125,000 francs. Nevertheless, by special contract, the carrier and the passenger may agree to a higher limit of liability.

(2) Dans le transport de bagages enregistrés et de marchandises, la responsabilité du transporteur est limitée à la somme de deux cent cinquante francs par kilogramme, sauf déclaration spéciale d'intérêt à la livraison faite par l'expéditeur au moment de la remise du colis au transporteur et moyennant le paiement d'une taxe supplémentaire éventuelle. Dans ce cas, le transporteur sera tenu de payer jusqu'à concurrence de la somme déclarée, à moins qu'il ne prouve qu'elle est supérieure à l'intérêt réel de l'expéditeur à la livraison.

(2) In the transportation of checked baggage and of goods, the liability of the carrier shall be limited to a sum of 250 francs per kilogram, unless the consignor has made, at the time when the package was handed over to the carrier, a special declaration of the value at delivery and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless he proves that that sum is greater than the actual value to the consignor at delivery.

(3) En ce qui concerne les objets dont de voyaguer conserve la garde, la responsabilité du transporteur est limitée à cinq mille francs par voyageur.

(3) As regards objects of which the passenger takes charge himself the liability of the carrier shall be limited to 5,000 francs per passenger.

(4) Les sommes indiquées ci-dessus sont considérées comme se rapportant au franc français constitué par soixante-cinq et demie milligrammes d'or au titre de neuf cents millièmes de fin. Elles pourront être converties dans chaque monnaie nationale en chiffres ronds. 49 *Stat.* 3006.

(4) The sums mentioned above shall be deemed to refer to the French franc consisting of 65½ milligrams of gold at the standard of fineness of nine hundred thousandths. These sums may be converted into any national currency in round figures. 49 *Stat.* 3019.

# APPENDIX B

## UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

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Nos. 91-95—September Term, 1966.

(Argued October 26, 1966 Decided December 16, 1966.)

Docket Nos. 30543-4-5-6-7

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JOHN LISI, etc., *et al.*,

*Appellees,*

—v.—

ALITALIA-LINEE AEREE ITALIANE, S.p.A.,

*Appellant.*

---

Before:

LUMBARD, *Chief Judge,*
MOORE and KAUFMAN, *Circuit Judges.*

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Appeal, pursant to 28 U. S. C. §1292(b), from a partial summary judgment, MacMahon, *J.*, United States District Court for the Southern District of New York, dismissing appellant's affirmative defenses based on the Warsaw Convention, 49 Stat. 3000, et seq.

Judgment affirmed.

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GEORGE N. TOMPKINS, JR., New York, N. Y. (Austin P. Magner, Condon & Forsyth, New York, N. Y., on the brief), *for appellant.*

*Appendix B*
*Opinion by Kaufman, C.J.*

THEODORE E. WOLCOTT, New York, N. Y. (Alfred W. Gans, New York, N. Y., on the brief), *for appellees.*

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KAUFMAN, *Circuit Judge:*

The question presented on this appeal is whether Alitalia's liability, arising from the crash of one of its planes, is limited by the provisions of the so-called Warsaw Convention.[1]

On February 26, 1960, while en route from Rome to New York, Alitalia's airplane crashed shortly after taking off from Shannon, Ireland. Five suits were brought and consolidated in the District Court for wrongful death, personal injuries and property damage, allegedly suffered by thirteen of the passengers aboard the craft at the time of the disaster. The appellees are citizens of New York, while appellant is an Italian corporation. Jurisdiction is based on diversity of citizenship, 28 U. S. C. §1332(a)(2).

In answering the complaints, Alitalia pleaded as affirmative defenses those Articles of the Convention which serve to exclude or limit an airline's liability to its passengers. Prior to trial, the appellees moved for a partial summary judgment to dismiss these affirmative defenses, asserting that they were not available because appellant had failed properly to notify the passengers of the applicability of the Convention. Judge MacMahon agreed with appellees and

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[1] 49 Stat. 3000-26. The official title is "Convention for the Unification of Certain Rules Relating to International Transportation by Air," hereinafter referred to as "Convention."

The Convention was concluded at Warsaw, Poland, on October 12, 1929, and proclaimed by President Roosevelt on October 29, 1934. Over ninety countries have become signatories to the Convention.

granted their motion. He also stayed the trial pending decision by us "on the controlling question of whether the challenged affirmative defenses are available to defendant [Alitalia] in the light of the facts shown here." 253 F. Supp. 237, 243 (S. D. N. Y. 1966). This Court granted appellant's application for leave to appeal pursuant to 28 U. S. C. §1292(b).[2]

I.

It is conceded that the flight in question meets the definition of "international transportation" contained in Article 1 of the Convention.[3] Therefore, the provisions of the Convention quite properly govern the present action. See *Eck* v. *United Arab Airlines*, 360 F. 2d 804, 808 (2d Cir. 1966).

Alitalia's main argument can be stated quite simply. Under Articles 17 and 18 of the Convention, 49 Stat. 3018-

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[2] "(b) When a district judge, in making in a civil action an order not otherwise appealable under this section, shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, he shall so state in writing in such order. The Court of Appeals may thereupon, in its discretion, permit an appeal to be taken from such order, if application is made to it within ten days after the entry of the order: *Provided, however,* That application shall not stay proceedings in the district court unless the district judge or the Court of Appeals or a judge thereof shall so order."

[3] "(1) This convention shall apply to all international transportation of persons, baggage, or goods performed by aircraft for hire. . . .

"(2) For the purposes of this convention the expression 'international transportation' shall mean any transportation in which, according to the contract made by the parties, the place of departure and the place of destination, whether or not there be a break in the transportation or a transshipment, are situated within the territories of two High Contracting Parties. . . ." 49 Stat. 3014.

19, the carrier is liable for the death or bodily injuries suffered by passengers while on board its aircraft, and for destruction or loss of checked baggage. But, this liability, it says, is limited by Article 22, 49 Stat. 3019, which provides:

> (1) In the transportation of passengers the liability of the carrier for each passenger shall be limited to the sum of 125,000 francs [approximately $8300] . . . . Nevertheless, by special contract, the carrier and the passenger may agree to a higher limit of liability.[4]
>
> (2) In the transportation of checked baggage and of goods, the liability of the carrier shall be limited to a sum of 250 francs [approximately $17] per kilogram, unless the consignor has made, at the time when the package was handed over to the carrier, a special declaration of the value at delivery and has paid a supplementary sum if the case so requires. . . .
>
> (3) As regards objects of which the passenger takes charge himself the liability of the carrier shall be limited to 5,000 francs [approximately $332] per passenger.

It is clear, however, that under other Articles of the Convention, these limitations on liability are not applicable if the carrier fails to deliver to the passenger a ticket or

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[4] Prior to the Hague Protocol of 1955 (see note 7, *infra*), the carrier was not liable even for this limited amount "if he proves that he and his agents have taken all necessary measures to avoid the damage or that it was impossible for him or them to take such measures," Article 20, 49 Stat. 3019; or if "the carrier proves that the damage was caused or contributed to by negligence of the injured person [and] the court . . . in accordance with the provisions of its own law, exonerates the carrier wholly or partly from his liability." Article 21, 49 Stat. 3019.

a check for baggage.[5] These Articles, moreover, provide that the ticket and check shall contain certain specified information, including "a statement that the transportation is subject to the rules relating to liability established by this convention."[6] Thus, it would appear, that unless the carrier furnishes to the passenger a ticket or baggage check containing the appropriate statement, it may not restrict its liability as circumscribed by the Convention Articles.

Alitalia responds, however, by arguing that there is a crucial difference in the language between Articles 3 and 4. While Article 4(4), it says, denies the carrier limited liability "if . . . [it] accepts baggage without a baggage check having been delivered, *or if the baggage check does not contain the particulars*" specified (emphasis added), the only ground stated in Article 3(2) for denying limited liability for the personal injuries or death of passengers, is the carrier's failure to deliver a ticket. Thus, we are asked to apply the principle *expressio unius est exclusio alterius* and to hold that failure to give notice on the passenger ticket that the flight is subject to the Convention's rules, will not deprive the carrier of the substantial delimitation of liability for personal injuries or death. All that is required, urges Alitalia, for this right to vest, is that a ticket be delivered to the passengers.

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[5] "[I]f the carrier accepts a passenger without a passenger ticket having been delivered he shall not be entitled to avail himself of those provisions of this convention which exclude or limit his liability." Article 3(2), 49 Stat. 3015.

"[I]f the carrier accepts baggage without a baggage check having been delivered . . . the carrier shall not be entitled to avail himself of those provisions of the convention which exclude or limit his liability." Article 4(4), 49 Stat. 3016.

[6] Article 3(1)(e), 49 Stat. 3015; Article 4(3)(h), 49 Stat. 3016.

*Appendix B*
*Opinion by Kaufman, C.J.*

II.

It is apparent that Alitalia relies on a literal reading of the Convention for its assertions. We reject the interpretation it urges upon us. While it is true that the language of the Convention is relevant to our decision, it must not become, as Justice Franfurter stated it, a "verbal prison." *Sullivan* v. *Behimer*, 363 U. S. 335, 358 (1960) (Frankfurter, *J.*, dissenting). The task of ascertaining the meaning of words is difficult, and one certain way of misinterpreting them is by a literal reading. As Learned Hand put it, "words are such temperamental beings that the surest way to lose their essence is to take them at their face." 1942 Address by Judge Hand to the Massachusetts Bar Association. Thus, the language of Article 3 cannot be considered in isolation; rather, it must be viewed in light of the other Articles and the overall purposes of the Convention. See *Eck* v. *United Arab Airlines, supra.*

This is not the first occasion on which we have been called upon to interpret the language of the Convention's delimiting provisions. For example, in *Mertens* v. *Flying Tiger Line, Inc.*, 341 F. 2d 851 (2d Cir.), *cert. denied*, 382 U. S. 816 (1965), we were asked to decide whether presenting a ticket to a passenger after he boarded the carrier's plane, constituted a "delivery" within the meaning of Article 3(2). We stated:

> We read Article 3(2) to require that the *ticket be delivered to the passenger in such a manner as to afford him a reasonable opportunity to take measures to protect himself against the limitation of liability.* Such self-protective measures, could consist of for example, deciding not to take the flight, entering in a special

contract with the carrier, or taking out additional insurance for the flight. The Convention specifically provides that "the carrier and the passenger may agree to a higher limit of liability," (Article 22(1)) and there would be little reason to make this provision, to require that the ticket state that the liability of the carrier is limited (Article 3(1)(e)), and to require that such a ticket be delivered to the passenger unless the Convention also required that the ticket *be delivered in such circumstances as to afford the passenger a reasonable opportunity to take these self-protective measures.*" *Id.* at 856-57 (emphasis added).

We held, accordingly, that the delivery was inadequate, and the Convention's fixed limits of liability were not available.

Later, a similar result was reached by the Ninth Circuit in *Warren* v. *Flying Tiger Line, Inc.*, 352 F. 2d 494 (1965). There the passenger was given a "boarding ticket" or "pass" at the foot of the ramp leading to the aircraft. The Court decided that the "delivery" must be made sufficiently in advance so that the passenger will have the opportunity to take self-protective measures, such as purchasing additional insurance if he so chooses. The "delivery" of a boarding ticket at the foot of the ramp as the plane was about to depart, did not suffice therefore. The carrier, accordingly, was barred by Article 3(2) from availing itself of the Convention's liability limitation provisions.

We believe that the reasoning of the *Mertens* and *Warren* decisions is apposite to the case now before us. The Convention's arbitrary limitations on liability—which have been severely and repeatedly criticized[7]—are advantageous to

the carrier. But the *quid pro quo* for this one-sided advantage is delivery to the passenger of a ticket and baggage check which give him notice that on the air trip he is about to take, the amount of recovery to him or his family in the event of a crash, is limited very substantially. Thus the passenger is given the opportunity to purchase additional flight insurance or to take such other steps for his self-protection as he sees fit.

This notice to passengers is especially important in this country where the overwhelming number of people who travel by air do so on domestic flights, for which the Convention's restrictions on liability are inapplicable. It is too much to expect these passengers to be sufficiently sophisticated to realize that although they are traveling the same number of miles on an international flight that they have frequently traveled domestically, the amount they may

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[7] See generally Sand, "Air Carriers' Limitations of Liability and Air Passengers' Accident Compensation Under the Warsaw Convention," 28 *J. Air L. & Com.* 260 (1961-62).

Criticism of the Convention's limits on liability began to crystallize in the early 1950's as a result of the impact on the public arising from a plane crash in 1943, in which the entertainer Jane Froman was seriously injured. Despite the extent of her injuries, the size of her medical bills, and the curtailment of her blossoming career, her award against Pan American was limited to $8300. *Ross* v. *Pan American Airways*, 299 N. Y. 88 (1949), *cert. denied, sub nom. Froman* v. *Pan American Airways, Inc.*, 349 U. S. 947 (1955). See Kreindler, "The Denunciation of the Warsaw Convention," 31 *J. Air L. & Com.* 291, 294 (1965).

In 1955, the Hague Conference was called, and from it came the so-called Hague Protocol, which would have doubled the limits on liability for personal injuries to $16,600. Although signed by the United States, it was not ratified by the Senate.

On November 15, 1965, the United States sent a Notice of Denunciation to the Polish Government stating that this country opposed the Convention's low limits on liability for personal injuries, and would withdraw from the Convention at the end of six months, pursuant to Article 39, 49 Stat. 3022. *Id.* at 303. The State Department made it

recover in the event of an accident is drastically reduced. In short, it is clear from the *ratio decidendi* of the *Mertens* and *Warren* cases, that the inquiry that must be made if the Convention's Articles are to be given meaning, is "whether the ticket was delivered to the passenger in such a manner as to afford him a reasonable opportunity to take self-protective measures . . . ." *Mertens* v. *Flying Tiger Line, Inc., supra* at 857.[8]

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known, however, that the denunciation would be withdrawn if the world's international air carriers agreed to raise the limitation first to $75,000 and ultimately to $100,000. An interim agreement was reached among the carriers, including Alitalia, in the Spring of 1966, providing for limits of liability of $58,000 plus costs of litigation, or $75,000 inclusive of costs of litigation, under conditions of absolute liability. On May 14, 1966, the United States withdrew its previous "Notice of Denunciation." See "The Warsaw Convention—Recent Developments and the Withdrawal of the United States Denunciation," 32 *J. Air L. & Com.*, No. 2, p. 243 (1966).

[8] Alitalia's reliance on *Grey* v. *American Airlines*, 227 F. 2d 282 (2d Cir. 1955), *cert. denied*, 350 U. S. 989 (1956), is misplaced. In that case defendant's plane, while en route from New York to Mexico City, crashed near Dallas. Although the flight was scheduled to make stops at Washington, D. C. and Dallas, this information was not contained on the ticket given to the plaintiffs, despite the provision in Article 3 of the Convention that all "agreed stopping places" shall be listed. Plaintiffs claimed that because of this omission, defendant was precluded from claiming limited liability under the Convention. Plaintiffs' motion to strike the carrier's defenses based on the Convention was denied by the district court, 95 F. Supp. 756 (S. D. N. Y. 1950), and we affirmed, finding that the motion was based on a "technical and wholly unsubstantial alleged omission." 227 F. 2d at 284.

Our decision in *Grey* is perfectly consistent with the holdings in *Mertens* and *Warren, supra*. In *Grey*, the plaintiffs boarded the plane in New York and were headed for Mexico City. The fact that the ticket failed to list the intermediate stops in Washington, D. C. and Dallas, in no way deprived them of "a reasonable opportunity to take self-protective measures," since those stops did not change the "international" character of the flight so far as plaintiffs were concerned. See Article 1. Therefore, "delivery" of the ticket had taken place, and the defendant was entitled to avail itself of the Convention's limits on liability.

III.

We proceed to determine, therefore, whether the particular tickets and baggage checks involved in the present case gave the appellees adequate notice.[9] On the front of the ticket and baggage check, in exceedingly small print, was the following message: "Each passenger should carefully examine this ticket, particularly the Conditions on page 4." And, at this point, we note that one of our reasons in *Mertens* v. *Flying Tiger Line, Inc., supra,* for precluding the carrier from limiting its liability under the Convention was that the required statement on the ticket "was printed in such a manner as to virtually be unnoticeable and unreadable . . . ." *Id.* at 857.

Judge MacMahon appropriately characterized the "notice" to the passengers in his pithy conclusion as "camouflaged in Lilliputian print in a thicket of 'Conditions of Contract'. . . . Indeed the exculpatory statements on which defendant relies are virtually invisible. They are ineffectively positioned, diminutively sized, and unemphasized by bold face type, contrasting color, or anything else. The simple truth is that their presence is concealed."[10] 253

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[9] The parties have agreed that this is a question of law for the court to resolve. A replica of the ticket may be found in the district court's opinion, 253 F. Supp. at 240-42.

[10] Moreover, even if a passenger were able to read the printing on the ticket and baggage check, it is highly questionable whether he would be able to understand the meaning of the language contained thereon. For example, the passenger is referred to the carrier's tariffs in order to determine whether his flight is considered "international carriage"; and the carrier's liability is expressed in terms of "French gold francs (consisting of 65½ milligrams of gold with a fineness of nine hundred thousandths)."

In 1963, the Civil Aeronautics Board took cognizance of the difficulty that the average passenger would have interpreting this language and issued what is now 14 C. F. R. §221.175, which provides in part:

> (a) In addition to the aforesaid requirements of this subpart, each air carrier and foreign air carrier which, to any extent, avails itself

F. Supp. at 243. Accord, *Warren* v. *Flying Tiger Line, Inc.*, *supra* at 497. But see *Seth* v. *British Overseas Airways*

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of the limitation on liability to passengers provided by the Warsaw Convention, shall, at the time of delivery of the ticket, furnish to each passenger whose transportation is governed by the Convention and whose place of departure or place of destination is in the United States, the following statement in writing:

Advice to International Passengers on
Limitation of Liability

Passengers embarking upon a journey involving an ultimate destination or a stop in a country other than the country of departure are advised that the provisions of a treaty known as the Warsaw Convention may be applicable to their entire journey including the portion entirely within the countries of departure and destination. The Convention governs and in most cases limits the liability of carriers to passengers for death or personal injury to approximately $8,290 and limits liability for loss or damage to baggage.

Additional protection can usually be obtained by purchasing insurance from a private company. Such insurance is not affected by any limitation of the carrier's liability under the Warsaw Convention. For further information please consult your airline or insurance company representative.

*Provided, however,* That when the carrier elects to agree to a higher limit of liability to passengers than that provided in Article 22(1) of the Warsaw Convention, such statements shall be modified to reflect the higher limit. The statement prescribed herein shall be printed in type at least as large as ten point modern type and in ink contrasting with the stock on (1) each ticket; (2) a piece of paper either placed in the ticket envelope with the ticket or attached to the ticket; or (3) on the ticket envelope.

(b) Each air carrier and foreign air carrier which, to any extent, avails itself of the limitation on liability to passengers provided by the Warsaw Convention, shall also cause to be displayed continuously in a conspicuous public place at each desk, station, and position in the United States which is in charge of a person employed exclusively by it or by it jointly with another person, or by any agent employed by such air carrier or foreign air carrier to sell tickets to passengers whose transportation may be governed by the Warsaw Convention and whose place of departure or destination may be in the United States, a sign which shall have printed thereon the statement prescribed in paragraph (a) of this section. Such statement shall be printed in bold face type at least one fourth of an inch high.

*Corp.*, 329 F. 2d 302 (1st Cir.), *cert. denied*, 379 U. S. 858 (1964).

We agree that a jury could not reasonably have found that the tickets and baggage checks gave the passengers the required notice. The District Court properly granted partial summary judgment striking out these affirmative defenses of appellant.

Affirmed.

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MOORE, *Circuit Judge* (dissenting):

The majority in their opinion indulge in judicial treaty-making. The language of the treaty (referred to as the Warsaw Convention) is clear. Its provisions are not difficult to comprehend. Its mandates are simply stated. Ascertainment of compliance should, therefore, present no real problem.

Passenger tickets were delivered to plaintiffs and their decedents on various dates between January 20, 1960 and February 20, 1960. The flight on which they travelled pursuant to their tickets did not depart until February 25, 1960. The ticket contained the particulars specified in Article 3(1) of the Convention, albeit the reference to the provisions of the Convention with respect to death or injury was in exceedingly small type.

The majority do not approve of the terms of the treaty and, therefore, by judicial fiat they rewrite it. They think a "one-sided advantage" is being taken of the passenger which must be offset by a judicial requirement that the passenger have notice of the limitation of liability. To support their argument they refer, quite illogically in my opinion, to cases in which the courts have held that there was no real delivery of a ticket to the passenger as contemplated by the treaty.

*Appendix B*
*Dissenting Opinion by Moore, J.*

Cases based upon facts tantamount to no effective pre-flight ticket delivery,[1] are scarcely relevant to this case where the passengers had their tickets from 3 to 36 days before departure. Were actual notice to be the requirement, every airline would have to have its agents explain to every passenger the legal effect of the treaty and, in all probability, insist that each passenger be represented by counsel who would certify that he had explained the import of the Convention to his client who, in turn, both understood and agreed to the limitation.

The original limitations in the Convention may well be outmoded by now. Substantial revisions upward have been made but they have been made, as they should be, by treaty and not by the courts. Judicial predilection for their own views as to limitation of liability should not prevail over the limitations fixed by the legislative and executive branches of Government even though this result is obtained by ostensibly adding to the treaty a requirement of actual understanding notice. Furthermore, for the courts to say that a jury could not reasonably have found that the ticket gave the passenger the required notice is, upon a motion for partial summary judgment, to usurp the time-honored function of the jury.

For these reasons, I would reverse.

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[1] *Mertens* v. *Flying Tiger Line, Inc.*, 341 F. 2d 851 (2 Cir. 1965) (Military officer already on board an aircraft about to take off when ticket delivered); *Warren* v. *Flying Tiger Line, Inc.*, 352 F. 2d 494 (9 Cir. 1965) (Soldiers handed boarding tickets at foot of ramp leading to plane about to take off); *Eck* v. *United Arab Airlines, Inc.*, 360 F. 2d 804 (2 Cir. 1966) (Warsaw Convention involved only on question of jurisdiction and venue).

*Appendix B*

**Judgment in *Lisi* v. *Alitalia***

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the sixteenth day of December one thousand nine hundred and sixty-six.

Present:

HON. J. EDWARD LUMBARD,
*Chief Judge,*

HON. LEONARD P. MOORE,
HON. IRVING R. KAUFMAN,
*Circuit Judges.*

---

JOHN LISI, Individually and as Administrator of the Estates of LUIGINA ZOCCI LISI, deceased, and JOHN LISI, JR., deceased and as next friend and Guardian FRANK LISI, an infant under the age of 14 years,

*Plaintiff-Appellee,*

—v.—

ALITALIA-LINEE AEREE ITALIANE, S.p.A.,

*Defendant-Appellant.*

---

Appeal from the United States District Court for the Southern District of New York.

*Appendix B*
*Judgment in Lisi v. Alitalia*

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed.

A. DANIEL FUSARO
*Clerk*

By VINCENT A. CARLIN
*Chief Deputy Clerk*

#91

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT
FILED DECEMBER 16, 1966
A. DANIEL FUSARO, *Clerk*

*Appendix B*

**Judgment in *Maiorano* v. *Alitalia***

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the sixteenth day of December one thousand nine hundred and sixty-six.

Present:

HON. J. EDWARD LUMBARD,
*Chief Judge,*

HON. LEONARD P. MOORE,
HON. IRVING R. KAUFMAN,
*Circuit Judges.*

---

JOSEPH MAIORANO,
*Plaintiff-Appellee,*

—v.—

ALITALIA-LINEE AEREE ITALIANE, S.p.A.,
*Defendant-Appellant.*

---

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

*Appendix B*
*Judgment in Maiorano v. Alitalia*

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed.

A. DANIEL FUSARO
*Clerk*

By VINCENT A. CARLIN
*Chief Deputy Clerk*

#92

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT
FILED DECEMBER 16, 1966
A. DANIEL FUSARO *Clerk*

*Appendix B*

**Judgment in *Como* v. *Alitalia***

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the sixteenth day of December one thousand nine hundred and sixty-six.

Present:

HON. J. EDWARD LUMBARD,
*Chief Judge,*

HON. LEONARD P. MOORE,
HON. IRVING R. KAUFMAN,
*Circuit Judges.*

---

NICOLINA COMO, as Guardian *ad Litem* of NICOLAS DISCLAFANI, MARIA DISCLAFANI and GIUSEPPE DISCLAFANI, and as Administratrix of the Estate of CATERINA DISCLAFANI, deceased and ALFREDO DISCLAFANI, deceased,

*Plaintiff-Appellee,*

—v.—

ALITALIA-LINEE AEREE ITALIANE, S.p.A.,

*Defendant-Appellant.*

---

Appeal from the United States District Court for the Southern District of New York.

*Appendix B*
*Judgment in Como v. Alitalia*

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed.

A. DANIEL FUSARO
*Clerk*

By VINCENT A. CARLIN
*Chief Deputy Clerk*

#93

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT
FILED DECEMBER 16, 1966
A. DANIEL FUSARO, *Clerk*

*Appendix B*

**Judgment in *Cologgi* v. *Alitalia***

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the sixteenth day of December one thousand nine hundred and sixty-six.

Present:

HON. J. EDWARD LUMBARD,
*Chief Judge,*

HON. LEONARD P. MOORE,
HON. IRVING R. KAUFMAN,
*Circuit Judges.*

---

ROCCO COLOGGI, Individually, and as Administrator of the Estate of ROSE COLOGGI, deceased and of BARBARA COLOGGI, deceased,

*Plaintiff-Appellee,*

—v.—

ALITALIA-LINEE AEREE ITALIANE, S.p.A.,

*Defendant-Appellant.*

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Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

*Appendix B*
*Judgment in Cologgi v. Alitalia*

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed.

A. DANIEL FUSARO
*Clerk*

By VINCENT A. CARLIN
*Chief Deputy Clerk*

#94

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT
FILED DECEMBER 16, 1966
A. DANIEL FUSARO, *Clerk*

*Appendix B*

**Judgment in *DiBiase* v. *Alitalia***

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the sixteenth day of December one thousand nine hundred and sixty-six.

Present:

HON. J. EDWARD LUMBARD,
*Chief Judge,*

HON. LEONARD P. MOORE,
HON. IRVING R. KAUFMAN,
*Circuit Judges.*

---

ROSINA DIBIASE, Individually, and as Administratrix of the Estate of NOTTE FARINA, deceased,

*Plaintiff-Appellee,*

—v.—

ALITALIA-LINEE AEREE ITALIANE, S.p.A.,

*Defendant-Appellant.*

---

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

*Appendix B*
*Judgment in DiBiase v. Alitalia*

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed.

A. DANIEL FUSARO
*Clerk*

By VINCENT A. CARLIN
*Chief Deputy Clerk*

#95

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT
FILED DECEMBER 16, 1966
A. DANIEL FUSARO, *Clerk*

*Appendix B*

**Memorandum Opinion Denying Petition for Rehearing**

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

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[SAME TITLE]

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CONDON & FORSYTH, New York, N. Y., *for appellant.*

Motion denied.

J.E.L.
I.R.K.
*U.S.C.JJ.*

For the reasons stated in this petition and in my dissent herein, I would grant.

L.P.M.
*U.S.C.J.*

Feb. 6, 1967

*Appendix B*

**Order Denying Petition for Rehearing**

UNITED STATES COURT OF APPEALS

THE SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals in and for the Second Circuit, held at the United States Court House, in the City of New York, on the sixth day of February, one thousand nine hundred and sixty-seven.

Present:

HON. J. EDWARD LUMBARD,
*Chief Judge,*

HON. LEONARD P. MOORE,
HON. IRVING R. KAUFMAN,
*Circuit Judges.*

---

JOHN LISI, Individually and as Administrator of the Estates of LUIGINA ZOCCI LISI, deceased, and JOHN LISI, JR., deceased and as next friend and Guardian of FRANK LISI, an infant under the age of 14 years,

*Plaintiff-Appellee,*

—v.—

ALITALIA-LINEE AEREE ITALIANE, S.p.A.,

*Defendant-Appellant.*

(and four other cases)

---

A petition for a rehearing having been filed herein by counsel for the appellant,

*Appendix B*
*Order Denying Petition for Rehearing*

Upon consideration thereof, it is

Ordered that said petition be and hereby is denied.

A. DANIEL FUSARO
*Clerk*

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT
FILED FEBRUARY 6, 1967
A. DANIEL FUSARO, *Clerk*

*Appendix B*

**Memorandum Opinion Denying Petition for Rehearing *in banc***

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

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[SAME TITLE].

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CONDON & FORSYTH, New York, N. Y., *for appellant.*

All of the active judges concurring, except Judges Moore, Friendly and Hays, who vote to grant, the petition for rehearing in banc is denied.

/s/ J. EDWARD LUMBARD

6 February 1967

*Appendix B*

**Order Denying Petition for Rehearing *in banc***

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the sixth day of February, one thousand nine hundred and sixty-seven.

Present:

HON. J. EDWARD LUMBARD,
*Chief Judge,*
HON. STERRY R. WATERMAN,
HON. LEONARD P. MOORE,
HON. HENRY J. FRIENDLY,
HON. J. JOSEPH SMITH,
HON. IRVING R. KAUFMAN,
HON. PAUL R. HAYS,
HON. ROBERT P. ANDERSON,
HON. WILFRED FEINBERG,
*Circuit Judges.*

---

JOHN LISI, Individually and as Administrator of the Estates of LUIGINA ZOCCI LISI, deceased, and JOHN LISI, JR., deceased and as next friend and Guardian of FRANK LISI, an infant under the age of 14 years,
*Plaintiff-Appellee,*

—v.—

ALITALIA-LINEE AEREE ITALIANE, S.p.A.,
*Defendant-Appellant.*

(and four other cases)

---

*Appendix B*

*Order Denying Petition for Rehearing in banc*

A petition for a rehearing containing a suggestion that the action be reheard having been filed herein by counsel for the appellant,

Upon consideration thereof, it is

Ordered that said petition be and hereby is denied.

A. DANIEL FUSARO
*Clerk*

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT
FILED FEBRUARY 6, 1967
A. DANIEL FUSARO, *Clerk*

*Appendix B*

**Order Granting Stay of Issuance of Mandate**

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

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JOHN LISI, ETC., *et al.*,

*Plaintiffs-Appellees,*

—v.—

ALITALIA-LINEE AEREE ITALIANE, S.p.A.,

*Defendant-Appellant.*

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MOTION TO STAY ISSUANCE OF MANDATE

George N. Tompkins, Jr., Condon & Forsyth, New York, N. Y., for defendant-appellant.

Motion to stay issuance of mandate granted subject to provisions of Rule 28(c).

J.E.L.
L.P.M.
I.R.K.
*U.S.C.JJ.*

20 February 1967

*Appendix B*

**Opinion by MacMahon, *D.J.***

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

60 Civ. 4365

and consolidated cases

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[SAME TITLE]

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APPEARANCES:

THEODORE E. WOLCOTT, Esq.
New York, N. Y.
*Attorney for Plaintiffs*

CONDON & FORSYTH, Esqs.
New York, N. Y.
(GEORGE N. TOMPKINS, JR., Esq.,
New York, N. Y., of counsel)
*Attorneys for Defendant*

MACMAHON, *District Judge*

These are consolidated actions for death, personal injuries or property damage suffered by passengers in a crash of defendant's airplane on February 26, 1960, in Shannon, Ireland, while en route from Rome to New York. Plaintiffs are residents and citizens of New York, and defendant is an Italian corporation. Jurisdiction is based on diversity.

Plaintiffs move for partial summary judgment dismissing all affirmative defenses which are based on the exclusion or limitation of liability provisions (Articles 20

and 22) of the Warsaw Convention,[1] 49 Stat. 3000 (1934). All of the evidentiary facts material to the motion appear on the face of the tickets issued to the passengers on the flight involved, and there is no dispute about them.[2] Plaintiffs claim that these exculpatory defenses are not available to an airline unless the airline delivers a passenger ticket and, where applicable, a baggage check, which no-

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[1] The official title is "Convention for the Unification of Certain Rules Relating to International Transportation by Air." With but a single reservation immaterial here, adherence was advised June 15, 1934; declared June 27, 1934; and proclaimed October 29, 1934. See 49 Stat. 3000 et seq. (1934).

Article 20(1) provides:

"The carrier shall not be liable if he proves that he and his agents have taken all necessary measures to avoid the damage or that it was impossible for him or them to take such measures."

Article 22 provides:

"(1) In the transportation of passengers the liability of the carrier for each passenger shall be limited to the sum of 125,000 francs [$8,300]. . . .

(2) In the transportation of checked baggage and of goods, the liability of the carrier shall be limited to a sum of 250 francs per kilogram, unless the consignor has made, at the time when the package was handed over to the carrier, a special declaration of the value at delivery and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless he proves that that sum is greater than the actual value to consignor at delivery.

(3) As regards objects of which the passenger takes charge himself the liability of the carrier shall be limited to 5,000 francs per passenger."

On November 15, 1965, the United States formally denounced the Warsaw Convention, effective May 15, 1966, unless the airlines serving the United States agree to raise the limitation on liability to $75,000, and ultimately to $100,000. See Kreindler, The Denunciation of the Warsaw Convention, 31 J. Air L. & Com. 291 (1965). Such denunciation does not affect these actions.

[2] The parties have submitted affidavits complying with Rule 9(g) of the General Rules of the United States District Courts for the Southern and Eastern Districts of New York.

tify the passenger that the exclusion or limitation of liability provisions of the Warsaw Convention are applicable to the flight, and that the tickets and checks delivered here did not notify the passengers of such provisions. Defendant claims that if a ticket and check are delivered to a passenger before departure, such defenses are automatically applicable to flights between nations adhering to the Convention even though the ticket and check do not notify the passenger of such provisions, and that, in any event, the tickets and checks delivered here so notified the passengers.

[1] The Warsaw Convention specifies that the provisions of the Convention which exclude or limit an airline's liability are unavailable unless the airline delivers a passenger ticket and baggage check.[3] The Convention also requires that the ticket and check contain "[a] statement that the transportation is subject to the rules relating to liability established by this convention."[4] Read together, the intent of these requirements is to afford the passenger a reasonable opportunity to take measures to protect himself against the airline's exclusion or limitation of its liability. Indeed, the Convention specifically provides that "the carrier and the passenger may agree on a higher limit

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[3] Article 3(2) provides in pertinent part:

"[I]f the carrier accepts a passenger without a passenger ticket having been delivered, the carrier shall not be entitled to avail himself of those provisions of the convention which exclude or limit his liability."

Article 4(4) provides in pertinent part:

"[I]f the carrier accepts baggage without a baggage check having been delivered, or if the baggage check does not contain the particulars set out at . . . [4(3)] (h) above, the carrier shall not be entitled to avail himself of those provisions of the convention which exclude or limit his liability."

[4] Articles 3(1)(e) and 4(3)(h).

of liability.".[5] Manifestly, if the ticket and check delivered by the airline fail to notify the passenger that the exclusion or limitation provisions of the Convention are applicable, the passenger is not afforded a reasonable opportunity to protect himself by deciding not to take the flight, entering into a special contract with the carrier, or taking out additional insurance.

[2] We hold, therefore, that compliance with the Convention requires not mere physical delivery of a ticket and check before departure but delivery of a ticket and check which notify the passenger that the provisions of the Convention which exclude or limit liability are applicable.[6] *Cf. Mertens* v. *Flying Tiger Line, Inc.*, 341 F.2d 851 (2d Cir.), *cert. denied*, 382 U.S. 816, 86 S.Ct. 38, 15 L.Ed. 2d 64 (1965); *Warren* v. *Flying Tiger Line, Inc.*, 352 F.2d 494 (9th Cir. 1965); *Block* v. *Compagnie Nationale Air France*, 229 F. Supp. 801, 808 (N.D.Ga. 1964); Sand, Air Carriers'

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[5] Article 22(1).

[6] Article 4(4), pertaining to baggage checks (see footnote 3), specifically bars a carrier from excluding or limiting its liability under the Convention if it (a) fails to deliver a baggage check, or (b) delivers a baggage check which does not contain the required statement. However, Article 3(2), pertaining to passenger tickets, specifies only one ground for barring a carrier from excluding or limiting liability, namely, failure to deliver a passenger ticket. Defendant argues from this that in cases involving personal injury and death, the absence of the required statement from the passenger ticket is meaningless, and that so long as a passenger ticket is delivered before the passenger boards the plane, the carrier can exclude or limit liability. To support this contention, it cites *Grey* v. *American Airlines, Inc.*, 95 F. Supp. 756 (S. D. N. Y. 1950), *aff'd*, 227 F. 2d 282 (1955), *cert. denied*, 350 U. S. 989, 76 S. Ct. 476, 100 L. Ed. 855 (1956). There it was held that a carrier could limit its liability for wrongful death even though it had failed to comply with Article 3(1)(c) by stating in the passenger ticket all the agreed places where the plane was to stop. However, we think the difference in importance between the statements required by Articles 3(1)(e) and 3(1)(c) destroys any argument that their absence from the ticket should be treated alike.

*Appendix B*
*Opinion by MacMahon, D.J.*

Limitation of Liability and Air Passengers' Accident Compensation under the Warsaw Convention, 28 J. Air L. & Com. 260, 262-63 (1962). Thus, if the tickets and checks issued here did not so notify the passengers, the challenged affirmative defenses are unavailable and must be dismissed.

We are of the opinion that a jury could not reasonably find that the passenger tickets and baggage checks delivered here notified the passengers that the exclusion or limitation provisions of the Convention were applicable and, accordingly, hold as a matter of law that defendant cannot exclude or limit its liability under the Convention in the case at bar. We think one look at the tickets and checks, which were combined in the form of small printed booklets, compels this conclusion. We set forth below replicas of the only applicable pages of typical tickets delivered here:

Outside Front Cover

of liability." [5] Manifestly, if the ticket and check delivered by the airline fail to notify the passenger that the exclusion or limitation provisions of the Convention are applicable, the passenger is not afforded a reasonable opportunity to protect himself by deciding not to take the flight, entering into a special contract with the carrier, or taking out additional insurance.

[2] We hold, therefore, that compliance with the Convention requires not mere physical delivery of a ticket and check before departure but delivery of a ticket and check which notify the passenger that the provisions of the Convention which exclude or limit liability are applicable.[6] *Cf. Mertens* v. *Flying Tiger Line, Inc.*, 341 F.2d 851 (2d Cir.), *cert. denied*, 382 U.S. 816, 86 S.Ct. 38, 15 L.Ed. 2d 64 (1965); *Warren* v. *Flying Tiger Line, Inc.*, 352 F.2d 494 (9th Cir. 1965); *Block* v. *Compagnie Nationale Air France*, 229 F. Supp. 801, 808 (N.D.Ga. 1964); Sand, Air Carriers'

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[5] Article 22(1).

[6] Article 4(4), pertaining to baggage checks (see footnote 3), specifically bars a carrier from excluding or limiting its liability under the Convention if it (a) fails to deliver a baggage check, or (b) delivers a baggage check which does not contain the required statement. However, Article 3(2), pertaining to passenger tickets, specifies only one ground for barring a carrier from excluding or limiting liability, namely, failure to deliver a passenger ticket. Defendant argues from this that in cases involving personal injury and death, the absence of the required statement from the passenger ticket is meaningless, and that so long as a passenger ticket is delivered before the passenger boards the plane, the carrier can exclude or limit liability. To support this contention, it cites *Grey* v. *American Airlines, Inc.*, 95 F. Supp. 756 (S. D. N. Y. 1950), *aff'd*, 227 F. 2d 282 (1955), *cert. denied*, 350 U. S. 989, 76 S. Ct. 476, 100 L. Ed. 855 (1956). There it was held that a carrier could limit its liability for wrongful death even though it had failed to comply with Article 3(1)(c) by stating in the passenger ticket all the agreed places where the plane was to stop. However, we think the difference in importance between the statements required by Articles 3(1)(e) and 3(1)(c) destroys any argument that their absence from the ticket should be treated alike.

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Limitation of Liability and Air Passengers' Accident Compensation under the Warsaw Convention, 28 J. Air L. & Com. 260, 262-63 (1962). Thus, if the tickets and checks issued here did not so notify the passengers, the challenged affirmative defenses are unavailable and must be dismissed.

We are of the opinion that a jury could not reasonably find that the passenger tickets and baggage checks delivered here notified the passengers that the exclusion or limitation provisions of the Convention were applicable and, accordingly, hold as a matter of law that defendant cannot exclude or limit its liability under the Convention in the case at bar. We think one look at the tickets and checks, which were combined in the form of small printed booklets, compels this conclusion. We set forth below replicas of the only applicable pages of typical tickets delivered here:

Outside Front Cover

BIGLIETTO PASSEGGERI
E
CONTROLLO BAGAGLIO 2253538
PASSENGER TICKET and BAGGAGE CHECK

ALITALIA
LINEE AEREE ITALIANE
I.A.T.A. Member
Viale Maresciallo Pilsudski, 92 - ROMA (Italia)

2

passeggero dovrà esaminare attentamente questo biglietto e particolarmente le Condizioni esposte a pag. 3.
Each passenger should carefully examine this ticket, particularly the Conditions on page 4.

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Page 4 of the Booklet

(See Opposite) ☞

# CONDITIONS OF CONTRACT

1. As used in this contract, « ticket » means « Passenger Ticket and Baggage Check », « carriage » is equivalent to « transportation », and « carrier » includes the air carrier issuing this ticket and all air carriers that carry or undertake to carry the passenger or his baggage hereunder or perform any labor incidental to such air carriage; « damage » includes death, delay, injury, loss or other damage of whatsoever nature arising out of or in connection with carriage or other services performed by carrier hereunder, Carriage to be performed hereunder by several successive carriers is regarded as a single operation.

2. a) Carriage hereunder is subject to the rules and limitations relating to liability established by the Convention for the Unification of Certain Rules relating to International Carriage by Air, signed at Warsaw, October 12, 1929, (hereinafter called « the Convention ») unless such carriage is not « international carriage » as defined by the Convention. (See carrier's tariffs, conditions of carriage for such definition). Carrier's name may be abbreviated in the ticket, the full name and its abbreviation being set forth in carrier's tariffs, conditions of carriage, regulations or timetables, and Carrier's address shall be the airport of departure shown opposite the first abbreviation of carrier's name in the ticket; and for the purpose of the Convention the agreed stopping places (which may be changed by carrier in case of necessity) are those places, except the place of departure and the place of destination, set forth in this ticket and any connection ticket issued herewith, or, as shown in carrier's timetables as scheduled stopping places on the passenger's route.

b) To the extent not in conflict with the foregoing, all carriage hereunder and other services performed by each carrier are subject to (i) applicable laws (including national laws implementing the Convention or extending the rules of the Convention to carriage which is not « international carriage » as defined in the Convention), governmental regulations, orders and requirements, (ii) provisions herein set forth, (iii) applicable tariffs, and (iv) except in transportation between a place in the United States and any place outside thereof and also between a place in Canada and any place outside thereof, conditions of carriage, regulations and timetables (but not the times of departure and arrival thereon) of such carrier, which are made part hereof and which may be inspected at any of its offices and at airports from which it operates regular services.

c) Unless expressly so provided, nothing herein contained shall waive any limitation of liability of carrier existing under the Convention or applicable laws.

3. Insofar as any provision contained or referred to herein, may be contrary to a law, governmental regulation, order or requirement, which universally cannot be waived by agreement of the parties, such provision shall remain applicable and be considered as part of the contract of carriage to the extent only that such provision is not contrary thereto. The invalidity of any provision shall not affect any other part.

4. Subject to the foregoing:

a) Liability of carrier for damages shall be limited to occurrences on its own lines, except in the case of checked baggage as to which the passenger also has a right of action against the first or last carrier. A carrier issuing a ticket or checking baggage for carriage over the lines of others does so only as agent.

b) Carrier is not liable for damage to passenger or unchecked baggage unless such damage is caused by the negligence of carrier.

c) Carrier is not liable for any damage directly and solely arising out of its compliance with any laws, governmental regulations, orders or requirements, or from failure of passenger to comply with same.

d) Any liability of carrier is limited to 250 French gold francs (consisting of 65½ milligrams of gold with a fineness of nine hundred thousandths) or its equivalent per kilogram in the case of checked baggage, and 5.000 such French gold francs or its equivalent per passenger in the case of unchecked baggage or other property, unless a higher value is declared in advance and additional charges are paid pursuant to carrier's regulations. In that event the liability of carrier shall be limited to such higher declared value. In no case shall the carrier's liability exceed the actual loss suffered by the passenger. All claims are subject to proof of amount of loss.

e) Any exclusion or limitation of liability of carrier under these conditions shall apply to agents, servants or representatives of the carrier acting within the scope of their employment and also to any person whose aircraft is used by carrier for carriage and his agents, servants or representatives acting within the scope of their employment.

5. Checked baggage carried hereunder will be delivered to the bearer of the baggage check upon payment of all unpaid charges due carrier under carrier's contract of carriage or tariff.

6. When validated, this ticket is good for carriage from the airport at the place of departure to the airport at the place of destination via the route shown hereon and for the applicable class of service and is valid for one year from the date of commencement of flight except as otherwise provided in carrier's regulations. Each flight coupon will be accepted for carriage on the date and flight for which accommodations have been reserved, when flight coupons are issued on an « open date » basis, accommodations will be reserved upon application subject to availability of space.

7. Carrier undertakes to use its best efforts to carry the passenger and baggage with reasonable dispatch, but no particular time is fixed for the commencement or completion of carriage. Subject thereto, carrier may without notice substitute alternate carriers or aircraft and may alter or omit the stopping place shown on the face of the ticket in case of necessity. Times shown in timetables or elsewhere are approximate and not guaranteed, and form no part of this contract. Schedules are subject to change without notice. Carrier assumes no responsibility for making connections.

8. The passenger shall comply with all government travel requirements, present all visas, entry, and other documents required by the law, and arrive at the airport by the time fixed by carrier or, if no time is fixed, sufficiently in advance of flight departure to permit completion of governmental formalities and departure procedures. Carrier is not liable for loss or expenses due to passenger's failure to comply with this provision.

9. No agent, servant or representative of carrier has authority to alter, modify or waive any provision of this contract.

10. No action shall lie in the case of damage to baggage, unless the person entitled to delivery complains to the carrier forthwith after the discovery of the damage, and, at the latest, within seven days from the date of receipt, and in the case of delay, unless the complaint is made at the latest within 21 days from the date on which the baggage has been placed at his disposal. Every complaint must be made in writing and if mentioned within the times aforesaid. Where carriage is not « international carriage » as defined in the Convention, failure to give notice shall not be a bar to suit where (1) it was not reasonably possible for him to give such notice, or (ii) that notice was not given due to fraud on the part of carrier, or (iii) the management of carrier had knowledge of damage to passenger's baggage.

11. Any right to damages against carrier shall be extinguished unless an action is brought within two years reckoned from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped. The method of calculating the period of limitation shall be determined by the law of the court seized of the case.

* Carriage effected wholly within the territory of Italy, which cannot be considered « international carriage » as defined by the Warsaw Convention, is governed by Italian Laws and Regulations concerning Contracts of Carriage by Air.

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One of the Coupons

(See Opposite) ☞

ALITALIA

LINEE AEREE ITALIANE

2

552

Nº 2122677

TUNIS

NEW-YORK

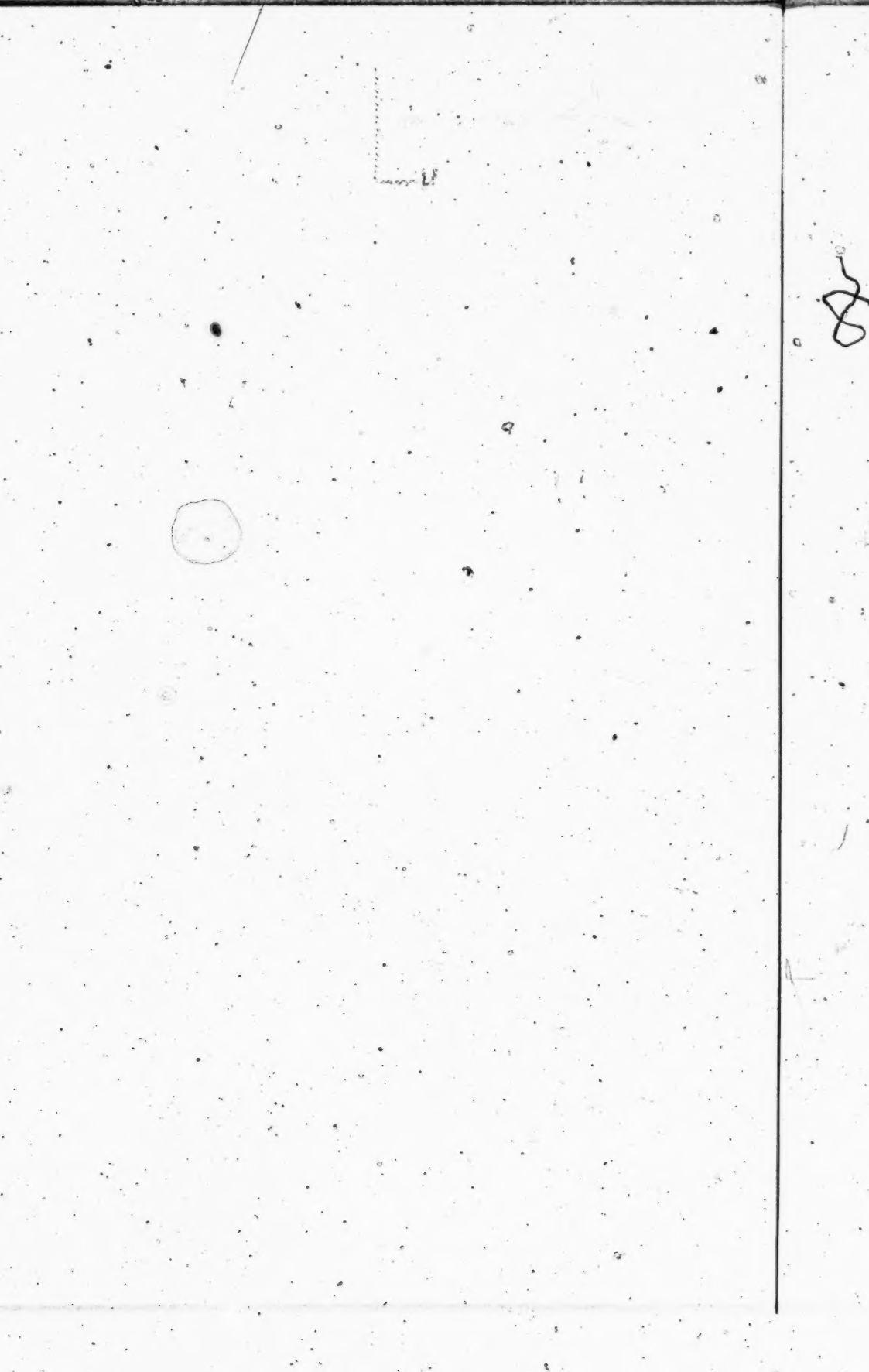
ROME

TUNIS

ROME

NEW-YORK

MR. DI SCLAFANI ALfredo



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The footnotes printed in microscopic type at the bottom of the outside front cover and coupons, as well as condition 2(a) camouflaged in Lilliputian print in a thicket of "Conditions of Contract" crowded on page 4, are both unnoticeable and unreadable. Indeed, the exculpatory statements on which defendant relies are virtually invisible. They are ineffectively positioned, diminutively sized, and unemphasized by bold face type, contrasting color, or anything else. The simple truth is that they are so artfully camouflaged that their presence is concealed.

"Lilliputian typography," *Eck* v. *United Arab Airlines, Inc.*, 20 App.Div.2d 454, 457 n.2, 247 N.Y.S.2d 820, 824, *rev'd on other grounds*, 15 N.Y.2d 53, 255 N.Y.S.2d 249, 203 N.E.2d 640 (1964), which must be read through "a magnifying glass," *Warren* v. *Flying Tiger Line, Inc.*, 234 F.Supp. 223, 230 (S.D. Cal. 1964), *aff'd*, 352 F.2d 494 (9th Cir. 1965), is at war with the intent of the Convention. This was recognized by our Court of Appeals in *Mertens* where one of the reasons for precluding the carrier from limiting its liability under the Convention was that the required statement "was printed in such a manner as to virtually be unnoticeable and unreadable. . . ." *Mertens* v. *Flying Tiger Line, Inc., supra* at 341 F.2d at 857.

We hold, therefore, that defendant failed to comply with Articles 3(1)(e) and 4(3)(h) of the Warsaw Convention and that the challenged affirmative defenses are unavailable to defendant in these actions.[7]

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[7] Plaintiffs also argue that the statements in the tickets and checks are wholly inadequate because framed in conditional terms. However, we think this argument meritless. If the statements were noticeable and readable, the passenger would have been sufficiently alerted to defendant's intention to use the Convention, wherever applicable, as a shield to ward off liability. This being so, the passenger could have called into play a variety of protective measures. *Accord, Seth* v. *British Overseas Airlines*

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Our decision involves a controlling question of law which we think should be immediately appealed under 28 U.S.C. § 1292(b). *Cf. Warren* v. *Flying Tiger Line, Inc., supra* 352 F.2d at 495. We have done our best to reconcile *Mertens* and *Grey* (see footnote 6), but until the Court of Appeals has had the last word, there will remain substantial ground for difference of opinion on whether failure to notify in accordance with Article 3(1)(e) has the effect we say, and whether the defendant failed to notify here as a matter of law. To clear the air on the law applicable to the facts shown here, an appeal is advisable. Moreover, an immediate appeal may materially advance the ultimate termination of this litigation.

Accordingly, plaintiffs' motions for partial summary judgment dismissing defendant's affirmative defenses are granted, and trial of the actions stayed pending decision of the Court of Appeals on the controlling question of whether the challenged affirmative defenses are available to defendant in the light of the facts shown here.

So ordered.

Dated: New York, N. Y.
April 1, 1966

/s/ LLOYD F. MACMAHON
LLOYD F. MACMAHON
United States District Judge

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*Corp.*, 329 F. 2d 302 (1st Cir.), *cert. denied*, 379 U. S. 858, 85 S. Ct. 114, 13 L. Ed. 2d 61 (1964); *Samuel Montague & Co.* v. *Swiss Air Transport Co.*, English Court of Appeals, Jan. 21, 1966.

A third argument made by plaintiff Como representing members of the Disclafani family, whose journey originated in Tunisia, is that since the official language of Tunisia is Arabic, and the tickets were printed in English and Italian, the Disclafanis were not given notice. We do not reach this argument here. For the purposes of this motion, plaintiff Como has withdrawn a fourth argument that Tunisia was not a party to the Convention at the time the Disclafanis commenced their journey.

## APPENDIX C

### House of Commons: 740 Official Report 139 (8 Feb. 67) Col. 1569-1593

**Civil Aviation (Carriage by Air Acts)**

—1569—

10.30 a.m.

**The Minister of State, Board of Trade (Mr. J. P. W. Mallalieu):** I beg to move,

That the Carriage by Air Acts (Application of Provisions) Order 1967, a draft of which was laid before this House on 7th December, be approved.

Hon. Members on both sides of the House have pressed for the ratification of the Hague Protocol of 1955, which amended the Warsaw Convention of 1929. This was made possible by Section 1 of the Carriage by Air Act, 1961, which gives effect in the United Kingdom to the Warsaw Convention as amended by the Protocol, but for a variety of reasons that Section has not yet been brought into force and the Protocol has not yet been ratified. It is the Government's view that this should now be done and that the United Kingdom should join the 49 countries which have already ratified.

It will, perhaps, be convenient if I remind the House of the purpose of the Warsaw Convention, which is probably the most widely ratified of international Conventions in the field of private law, and of the existing legislation relevant to it. The Convention ensures a measure of international uniformity in the law governing international carriage by air, thereby eliminating difficult and potentially expensive litigation as to which country's law applies. It also confers on passengers and their dependants, and on the shippers of cargo, the reversal of the burden

of proving the carrier's negligence, in exchange for which the carrier enjoys a uniform limit of liability, which facilitates the arrangement of insurance. In the absence of wilful misconduct on the part of the carrier, his servants or agents, this limit is at present equivalent to some £3,000 per passenger.

The Carriage by Air Act, 1932, gave effect in the United Kingdom to this Convention and the Carriage by Air (Non-international Carriage) (United Kingdom) Order, 1952, made under the provisions of that Act, applied the same limit of liability to domestic and other carriage not covered by the Convention. Under the Act and the Order, therefore, the same limit is applied to all carriage, what-



ever the point of departure and destination or the nationality of the passenger or shipper, and it makes no difference where the accident occurs or which airline is involved.

I come to the Hague Protocol of 1955, which made a number of amendments to the Warsaw Convention and, in particular, raised the limit of liability from £3,000 per passenger, which was generally agreed among the nations to have become too low, to some £6,000 per passenger. With the passing of the years, that in turn has come to be regarded as on the low side, and international discussions have begun under the auspices of the International Civil Aviation Organisation with a view to the further amendment of the Hague-Warsaw system and, in particular, a further possible increase. It is the Government's hope that these discussions will be successful, but we recognise that several years are likely to pass before a new Convention or Protocol is drawn up, signed and ratified by a sufficient number of States.

**Mr. David Webster** (Weston-super-Mare): How many States would the hon. Gentleman consider to be a "sufficient number"?

**Mr. Mallalieu:** I should have thought that 49 would be a sufficient number.

We think, therefore, as I have said, that we should, without more ado, proceed to ratification of the Hague Protocol and are planning to lodge the instrument of ratification with the Polish Government on 3rd March, 1967. Allowing for the 90 days that mast (sic) elapse before it becomes effective, the Protocol will then be in force for the United Kingdom as from 1st June next.

On the same day the Carriage by Air Act, 1932, which gave effect to the provisions of the original Warsaw Convention, will be repealed by virtue of Section 1(3) of the 1961 Act and the Carriage by Air (Non-international Carriage) Order, 1952, made under it will accordingly cease to have effect. It is proposed that that Order, which, as I have said, applied the Warsaw provisions, with some exceptions and adaptations, to domestic and other carriage not governed by the Convention, should be replaced by the draft Carriage by Air Acts (Application of Provisions) Order, 1967, which is proposed to be made under



Section 10 of the Act of 1961, and which is now before the House. The draft Order will, of course, apply, as does the parent Act, to all forms of commercial air service; that is, to charter and inclusive tour flights as well as to scheduled services.

**Mr. Eric Lubbock** (Orpington): The hon. Gentleman is entitled under paragraph 8 of the Order to

> "... exempt any carriage or class of carriage ... from any of the requirements imposed by this Order".

Does the Department have any intention of exercising that power in regard to any class of carriage?

**Mr. Mallalieu:** There is an intention in regard to flying clubs, with which I shall deal.

**Mr. Webster:** Are we today trying to get in line with an existing Convention or are we stepping out of line in the hope that other countries will follow suit?

**Mr. Mallalieu:** We are today getting in line with the Hague Protocol to the Warsaw Convention.

As I was saying, the main provisions of the Order are, first, that it applies the principles of the amended Convention to domestic and other carriage which is not governed by either the unamended or amended Warsaw Convention. As permitted by Section 10, however, a number of "exceptions, adaptations and modifications" are made; for example, the omission of the requirements as to documentation and of the restriction of the courts in which actions may be brought.

A matter of more general interest, and one which will be particularly welcomed by the House, is that the draft Order raises the carrier's limit of liability in respect of domestic carriage and other types of carriage to which it applies to some £21,000 per passenger instead of the £6,000 which is the limit in the Hague Protocol.

**Mr. Kenneth Lewis** (Rutland and Stamford): In view of the difference in liability that there will be and, therefore, the difference in advantage to the public between an international journey and a domestic one, would the hon. Gentleman confirm that, in the event of a catastrophe, difficulty will be created? For example, if someone is travelling on

an international journey from, say, Manchester, that per-
—1572—
son will simply be covered by the airline's £6,000 liability, while someone else travelling on an international journey, but going first from Manchester to London and then picking up the international flight, will get double cover.

**Mr. Mallalieu:** That would depend on where the passenger had booked for. If he had booked from Glasgow to London, the passenger would be covered by one form of cover. If he had booked for an international route he would be covered by another form of cover. However, I am afraid to tell the hon. Gentleman that there is yet a further complication due to an agreement between airlines and the United States for this £21,000 cover to be extended to journeys across the Atlantic.

**Mr. Cranley Onslow** (Woking): Would the hon. Gentleman confirm that it will be perfectly possible for there to be, in the same aeroplane, four people with different tickets proceeding to different destinations and going on different types of journey and that all will be entitled under the Order to entirely different limits of compensation in the event of an accident?

**Mr. Mallalieu:** I do not think that that would necessarily occur if they were all travelling in the same aeroplane, since the same liability would appear to apply, but I will look into that point.

Secondly, this applies the principles of the amended Convention to the carriage of airmail, with similar exceptions, adaptations and modifications. Thirdly, as a transitional provision it applies, with the necessary modifications, those principles to the diminishing amount of

carriage still governed by the unamended Warsaw Convention to which the United Kingdom remains a party. Further, it applies the Warsaw-Hague system to gratuitous carriage by the Crown, carriage by the Crown for reward, already being covered in that system. As permitted by Section 10(3), it gives the Board of Trade power to exempt any class of carriage from the requirements imposed by the Order.

If the draft Order is approved, and it and the Hague Protocol come into effect in this country on 1st June, 1967, there will then be three classes of carriage governed by their provisions: first, carriage governed by neither the



amended nor the unamended Convention where the £21,000 limit will apply—for example, London to Glasgow, London to Gibraltar non-stop and London to Istanbul non-stop, since Turkey is not yet a party to either the Protocol or the unamended Warsaw Convention; secondly, carriage governed by the Warsaw Convention as amended by the Hague Protocol where the £6,000 limited liability will apply. An example of that would be carriage between London and Paris, since both the United Kingdom and France will then be parties to the Protocol.

Thirdly, there is the residual and diminishing amount of carriage still governed by the unamended Warsaw Convention where the £3,000 limit will apply. An example of that would be London to Delhi until such time as India also ratifies the Protocol, although the return journey London—Delhi—London will be governed by the Protocol. In practice, however, a great deal of this carriage, namely carriage involving a stop in the U.S.A., will be governed by arrangements under which the major airlines have

voluntarily agreed to a limit of £21,000 as an interim measure pending the further revision of the Convention.

It is unfortunate, as hon. Members very well sense, that there must be these variations in the limits, but uniformity is not something that we can achieve by ourselves in advance of a satisfactory outcome of the international discussion which I have mentioned. Nevertheless, our proposals do, I believe, represent a valuable advance on the existing situation where both international and non-international carriage is subject to the same limit of £3,000 and, having regard to the interests of the ever-growing number of the public who travel by air, I am sure that the House will wish to approve the Order.

10.42 a.m.

**Mr. Anthony Grant** (Harrow, Central): While I do not oppose this Order in principle as such, I wish to raise a rather technical but nonetheless important matter arising out of a certain decision in America on airline liability. It is of profound importance to the airlines and, therefore, to the travelling public. First, I express my apologies



to the Minister for probably having to leave before any reply is made to this debate because I have another meeting to attend. I trust that he will acquit me of any seeming discourtesy.

The position, I understand, is that the Warsaw Convention imposes an absolute liability upon airline carriers in exchange for which they can put a limit on the damages and the compensation which they pay. In this sense it has worked out to the advantage of carriers throughout the world. I understand that last May the United States nearly left the Convention, but was persuaded not to do so. If

it had left, the position would have been that in the event of injury being suffered in America the passenger would have had the onus put on him to prove ordinary airline negligence.

If he could succeed in that respect, his damages might well be unlimited. The provisions of this Convention, to which the United States is still a party, provide that a carrier must deliver a passenger ticket which contains certain particulars one of which is:

> "a statement that the carriage is subject to the rules relating to liability established by the Warsaw Convention".

The Order says on page 10:

> "The absence, irregularity or loss of the passenger ticket does not affect the existence or the validity of the contract of carriage, which shall none the less be subject to the rules of this Schedule. Nevertheless, if the carrier accepts a passenger without a passenger ticket having been delivered he shall not be entitled to avail himself of those provisions of this Schedule which exclude or limit his liability".

In April, 1966, a case was heard in the United States courts called Lisi v. Alitalia Airlines. In that case Mr. Lisi's executors sought damages from Alitalia Airlines in respect of a crash at Shannon in Ireland. The decision of the court was that Alitalia had failed to comply with the provisions of the Convention in that the notice put on the ticket delivered to Mr. Lisi and others was in such microscopic type that it was impossible to say, according

to the court, that he had had sufficient notice of the excluded provisions on liability.

The case came to appeal before the Appeal Court in America last December. As a result of that appeal, great confusion now arises in the minds of those concerned



with air carriage. The appeal decision said in effect that a carrier has a duty of conveying the actual notice of the exclusion of liability to a passenger "in such time" —those are the relevant words—as the passenger can take self-protective measures against such exclusion of liability. Examples of that would be that the passenger could take out certain insurance, could come to a decision whether to travel or not knowing that this exclusion of liability existed, or have an opportunity to enter a special contract.

The practical position is that all over the world tickets are delivered very often only a few moments or a few hours, or perhaps a day or so, before actual departure. From an administrative point of view I am informed that it is entirely impracticable for airlines to give greater notice than they do now. Often it is a day or even hours or minutes before a plane departs. There is no certainty what the words "in such time" mean. If it is suggested that this should be a matter of weeks or perhaps a month to enable the passenger to consider all the ramifications of a separate contract and whether to travel or not, this would place an intolerable burden on the whole business of air travel.

If the case is upheld—and I understand that there is a possibility of it going to the Supreme Court in America—it would have the effect that a British airline which crashed or caused injury to a passenger in America would get the worst of both worlds. It would have the onus of absolute

liability and the onus would not be on the passenger. It would be subject to the Convention in that respect, but the airline would not be entitled to limit the damages.

On this basis I am advised that it would be better if the United States were out of the Convention. Then, although an airline would have unlimited damages to pay, the onus of preventing negligence would be on the passenger. For that reason the Government should be aware of the very great increase in costs which might arise if this decision before the Supreme Court were upheld. The first question which I put to the Government on this Order is whether they are aware of the litigation and decision in the Lisi v. Alitalia case. Do the Government realise that, if the decision is unreversed by the Supreme Court, it will lead

—1576—

to an enormous increase in airline claim costs in the United States? If the decision is unreversed, will the Government give consideration even to withdrawal from the Warsaw Convention on these grounds? What steps are being taken to reverse the effect of this decision?

In addition, a meeting has just taken place—I believe that it has been adjourned—of an international panel of experts in Montreal which has been looking into the whole question of amendment to the Convention. Could the Government delay their decision until the experts have had a chance of considering the ramifications of this case? Is it possible that the United Kingdom could postpone the ratification of the Hague Protocol in order to see whether it is worth staying in the Warsaw Convention if the Lisi case remains part of the law of the United States?

I appreciate that the Government might well say that it is vital that we get on with this Order in order to comply

with the requirements of the Hague Protocol. If that is so, they should be alerted to the fact that, although we do not oppose the Order in principle, there are a number of imperfections—this is a very profound and important one—and they should seriously consider the possibility of producing an amending Order later when the result of this very vital decision is known.

10.51 a.m.

**Mr. R. J. Maxwell-Hyslop** (Tiverton): It would be extremely ungenerous of me to do anything other than welcome this very timely Order. Hon. Members will remember that on the Report stage of the 1961 Act I proposed an Amendment upon which this Order actually improves. My Amendment was lost by one vote. Therefore, I cannot do other than welcome an Order which on many domestic flights—that is, those which are not subject to the exemption procedure—raises the limit of damages to £21,000.

I must state, however, that the Order still leaves the slight anomaly, which was brought out in 1961 that if someone is killed in a railway train the limit of damages is £24,000 but if someone is killed travelling by air the limit is £21,000. I should have been happier if the figure had been consolidated at £24,000 so that the limit was the same by air on domestic flights as it is for rail accidents. How-



ever, I repeat that it would be extremely ungenerous of me not to welcome the very considerable improvement to £21,000.

In the 1961 debate it was immediately apparent from the reaction of hon. Members that nobody understood the import of the statements on an airline ticket about the limit of liability. Article 8 of the Order reads:

*Appendix C*
*House of Commons Report*

"The Board of Trade may, subject to such conditions as they think fit, exempt any carriage or class of carriage or any person or class of person from any of the requirements imposed by this Order."

So far, so good, but it is very important that anybody flying on a domestic flight should know whether his carriage on that flight is or is not exempted; and, if it is exempted, what the effect of the exemption is.

I must apologise to the Minister of State, Board of Trade for the fact that, as I was due at a meeting of B.E.A. earlier this morning than now, I shall probably have to leave before he commences his winding-up speech. However, I should be very grateful if he could put on the record in that speech what his own guidelines within his Department will be for operating Article 8, so that the public at large can know in what circumstances flights are likely to be exempted, what notice will be given to people that they are exempted, and what the result of such exemption will be.

My hon. Friend the Member for Woking (Mr. Onslow) stated that there are four different classes of potential passenger from the point of view of limitation of liability. My count makes it at least six. There are domestic flights which will be subject to the Order—that is, with a limit of £21,000. There will be domestic flights exempted from the Order under Article 8. There will be domestic flights which do not fall within the provisions anyway, because they are subject to concession—for instance, an airline employee travelling under concession on that airline. Then there are international flights subject to the Order. There will be international flights subject to the Guadalajara Conven-

tion. There will be international flights which are not subject to the amended procedures—Turkey being one. Those are six different classes of passenger. I do not claim that it is an exhaustive list.

—1578—

I ask specifically not only that the Minister should give the House the guidelines for the rules he makes but that in making those rules there should be a prominent notice, not just a fine print statement, on all tickets issued under the exemption provisions of Article 8, drawing effectively to the attention of the would-be passenger the fact that it is exempted. Sometimes a ticket contains an announcement that the flight is subject to certain exemptions or conditions, the details of which can be obtained from the ticket office. This notice appears, for instance, on a railway ticket. If the intending passenger asks the booking clerk for a copy of the conditions under which the ticket is issued, he is told that he must go either to Paddington station or somewhere equally remote to obtain the copy. Therefore, to issue, for example at a flying club, a ticket having on it a notice stating that the flight is subject to exemption from the provisions of the Order, without also having prominently displayed a statement of the effect of the exemption, is what I call a lawyer's notice rather than a reasonable person's notice.

**Mr. Grant:** In defence of a very great profession of which I am a member, I point out that it is lawyers who draw attention to the smallness and obscurity of type on notices.

**Mr. Maxwell-Hyslop:** That is true, but lawyers have to be employed before they draw attention to it. Reverting to the subject of notice, it is particularly important that it should be comprehensible.

Where there are such exemptions, which are exemptions from a reasonable limit, it is relevant to rehearse again why it is just and desirable that there should be different limits on domestic flights from those which apply to international flights. The reasons are basically these. It is not only difficult and expensive, but also sometimes impossible, to prove negligence, even in a British court, because so much of the evidence of the cause of the accident is destroyed in the accident.

It is difficult enough to prove negligence in the case of air accidents in a British court—in the cost of which, incidentally, if people are impecunious they may be assisted

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through the Legal Aid fund. It is very much more difficult to prove negligence in a court thousands of miles away where the standards of justice and the court procedures are, to put it mildly, not entirely consistent with our own. The advantage which passengers or their dependants receive under the Warsaw Convention, the Hague Protocol, and the Guadalajara Convention, is that it is no longer necessary to prove the negligence of the airline concerned. It is necessary only to demonstrate that the damage or death resulted from the accident and there is then an automatic entitlement.

I remark in passing that the limit of damages does not apply when wilful misconduct can be proved against the pilot or aircrew. But this also is extremely difficult to prove when all the people concerned are dead and there is just wreckage left on the ground. Therefore, one may say that, to all intents and purposes, the limit applies and the balance of advantage lies with Measures of this kind.

On domestic carriage, this is not so to the same extent because people have access to the British courts and they

are not debarred for financial reasons. Nevertheless, one must bear in mind that a substantial proportion of the traffic on domestic flights is business traffic rather than holiday traffic. It is fair to say that people who use internal air routes in the course of their profession or occupation are most unlikely to be earning less than £1,000 a year. Capitalising that at, say, 6 per cent., it comes to more than £21,000. I am not a lawyer, but I understand that the normal basis of compensation is to capitalise the income which the dead person was receiving.

I say that merely to show that £21,000 is not an over-generous figure. I hope that the Minister, whoever he may be and whoever the Government may be, will not feel that, now that this excellent Measure has been brought in, it must necessarily run for the next 10 or 15 years unamended. As the level of incomes rises so does the damage suffered by someone incapacitated or by the dependants of a person killed on a flight.

I welcome the Order, therefore, though without prejudice to pressure for increases in the limit of liability in the future *pro rata* with the fall in the value of money and the rise in average earnings.

—1580—

**Mr. Kenneth Lewis:** Will not my hon. Friend agree that the increase in the limit of compensation now to be available for the domestic passenger will create, an anomaly in relation to someone travelling, for instance, from the United Kingdom and flying in the United States? It will be an international flight, but the flight across the United States will be a domestic flight. There is a great difference between a domestic trip within the United States, which can be as long as a journey from the United States to the

United Kingdom, and a domestic trip within the United Kingdom. Is there not an anomalous distinction here created by the difference between compensation paid for an international flight and compensation paid for a domestic trip?

**Mr. Maxwell-Hyslop:** With respect, no greater anomaly is created than is already the case in travel by surface transport in a foreign country, which is subject to the domestic law of the country concerned. I say, in passing that, as I read the present law as amended by the Order, if one is making a journey from one British territory to another without calling at an airport in the United States, it is immaterial whether one overflies the United States or not. It is certainly true that there are many different classes of carriage, but what my hon. Friend says applies whether one travels by ground transport or by air transport. What we are endeavouring to do is to reduce the restriction on damages in so far as we are able to do so, and this Order undoubtedly does that.

I mention one further matter *en passant*. Many people take out insurance to cover themselves in excess of the limit of liability imposed. It is all the more important that this insurance cover should be available when Article 8 of the Order is invoked and there is exemption by Ministerial licence. The normal way of obtaining this further cover is by putting a coin into a slot machine with a time-stamping device inside. Out comes a ticket selling the cover, beginning at the time stamped on it by the clock.

It is common knowledge that the times of greatest risk are on landing and take-off. It is particularly important,

therefore, that the clocks stamping the time are not fast. If a clock is fast it can have the result of marking a time

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for beginning the insurance cover after the person has taken off in the aircraft. This is not hypothetical. Twice I have been to an airport in the United Kingdom at which the clock was as much as 15 minutes fast. If someone purchased insurance cover immediately before boarding the aircraft and the aircraft then crashed on take-off, the insurance company would not, except *ex gratia,* be at risk although the passenger believed that he had covered himself. I do not know how far it is possible to deal with this, but it is one of the considerations which the Minister would do well to bear in mind in issuing an exemption under Article 8.

I end as I began, by welcoming the Order. I wish that it had been brought in much earlier. A long time has elapsed since the passage of the Carriage by Air Act, 1961, and I have badgered successive Ministers of successive Governments to be more expeditious in the matter. We shall all be grateful for the Order, and the fewer the exemptions granted by the Minister the more certain will the law be in the knowledge of the average passenger.

11.8 a.m.

**Mr. John Rankin** (Glasgow, Govan): I am sorry, though the House may be glad, that my remarks must on this occasion be very brief. I am serving on a Standing Commitee in which there are liable to be Divisions, and I may be called suddenly. That control is an unfortunate control, but I feel that I must at least say, "Thank you" to my hon. Friend the Minister, as did the hon. Member for Tiverton (Mr. Maxwell-Hyslop). The hon. Gentleman

and I five years ago emphasised to the Minister at that time the need to amend the provisions covering carriage by air, and now, like him, I rejoice in the raising of the limit. I endorse every word the hon. Gentleman said. I hope that the Minister will remember that it is not a final sum. We recognise that travel by air is getting safer every day and is now much safer than it was even five years ago. Those of us who use air transport realise that. But the result of an accident in the air is so comprehensive and final as compared with an accident in almost any other medium of travel that the compensation must bear relationship not only to the falling value of money but to that

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finality. That must be a factor in estimating the compensation.

**Mr. Onslow:** I have been trying to follow the hon. Gentleman's argument. Is he saying that there is a particular quality about death in an aircraft accident which means that the liability limit should be higher than for death in a car or train accident?

**Mr. Rankin:** I may not have expressed myself very well. I believe that travelling by air involves the possibility of finality in an accident, but that an accident is not so liable to occur as in travel by sea or road. In the event of an aircraft accident, the number of survivors is generally very small, if any. It is merely a matter of observance, and from my knowledge of accidents in the air I have no reason to change what I have said. There is certainly always the chance of finality in a railway or bus accident, and so on, but the risk is not so great as it is by air and therefore I believe that that should affect the figure of damages when an accident occurs.

*Appendix C*
*House of Commons Report*

I notice that liability starts at the terminal, according to Article 18(3) of the Convention. If I read that accurately, the passenger is regarded as being covered by the liability for compensation from the moment he leaves the terminal.

I am glad that my hon. Friend has brought forward this improvement in the Carriage by Air Acts, but I feel that the Explanatory Note might have been more comprehensive. I hope that when there is an amendment of the Order the Explanatory Note will tell us exactly what it means and will be fuller than the rather brief comment that this Explanatory Note gives.

11.15 a.m.

**Mr. Eric Lubbock** (Orpington): I must disagree strongly with the hon. Member for Glasgow, Govan (Mr. Rankin) over the implied suggestion in his speech that travel by air is more dangerous than travel on the roads. If he looks at the statistics he will find that the number of people killed on our roads every year is many times larger than the number of people killed in air travel in the whole world.

**Mr. Rankin**: I did not say anything of the kind. I did not say that travel by air was more dangerous. I said

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that in the event of an accident the outcome was more certain.

**Mr. Lubbock**: That is indeed what the hon. Gentleman said. I disagree with him on that as well, because many minor accidents take place on the airlines which do not result in either the injury or death of a passenger. Perhaps they are not given the same prominence as accidents in which the whole aircraft is lost with all the passengers,

but if the hon. Gentleman looks at the tables published periodically in *Flight* and other aviation magazines, he will see that quite a number of accidents occur in which there is no injury to any of the passengers or crew. It would be misleading the public if we suggested that in the event of an accident on an aircraft their chances of being killed were very much higher than in other means of transport. That will not help what both the hon. Gentleman and I wish, which is to encourage more people to travel by air.

**Mr. Rankin:** I am sure that the hon. Gentleman does not seek to expand what I said beyond what was contained in the words I used.

**Mr. Lubbock:** I hope that I was not doing that, but I think that the hon. Member for Glasgow, Govan may have given that impression during some of his remarks.

The hon. Member raised the interesting question whether one is covered in transit from the terminal to the airport. As I read Article 18(3), cover applies only in cases where the contract for carriage from the terminal to the airport is part of the contract for carriage by air from the airport onwards. I understand that one's contract in respect of the bus from the London Air Terminal to Heathrow is separate from the contract one enters into with the airline for a flight from Heathrow to Glasgow, for example.

It would be of great importance if the Minister could clarify this in his reply, because my impression is that the journey along the M4 in one of the buses is a great deal more dangerous than the journey from Heathrow to Glasgow. A great many passengers would like to know if they were covered on the bus journey as well.

*Appendix C*
*House of Commons Report*

I hope that my main point will not be a discordant
—1584—.
note in the general welcome expressed for the Order. It is the question of the effect of the increased limits on the domestic air fares. I shall not argue with the principle of the Order, because I agree with the hon. Member for Tiverton (Mr. Maxwell-Hyslop) that higher limits are necessary and are inevitable in the end. But the Minister might consider delaying the application of the increases to a date after 1st June for domestic airlines. I take it that he has power to do that under paragraph 8, although he said in reply to an intervention from me that that paragraph was intended to apply only to the flying clubs.

I have made some inquiries of experts, who have given me figures relating to various airlines, of the likely effect of the increased premiums on their domestic fares. Airline "A" says that the increased premiums would amount to £50,000 to £60,000 annually, and would mean a demand for a further increase of 3 to 4 per cent. in its fares. I shall not quote them all. Airline "C" says that the cost of increased premiums would be between £50,000 and £70,000, which amounts to about 5s. on each ticket issued.

No doubt, the hon. Gentleman will have made some inquiries of the airlines about the financial effects of the Order and will have considered the possibility that they may apply to the Air Transport Licensing Board for increases in the domestic air tariff as a result of the Order coming into operation on 1st June.

There might be a possible conflict with the Government's policy for prices and incomes, which was referred to in the last Report of the Air Transport Licensing Board. After reviewing a number of applications for domestic fare

increases which had been submitted during the year, the Board concluded, in paragraph 77, that

> ". . . on the basis of the White Paper criteria there was only limited justification for the increases proposed. But the White Paper does not consider the case of an enterprise that has for some time been operating at a loss, and is likely even with the utmost managerial exertions to continue making losses throughout the foreseeable future unless additional revenue is obtained. In such circumstances the enterprise must choose between increasing prices or going out of existence; and it is under conditions such as these that the greater part of British domestic air services have been operating."

Has the Minister taken into account this situation in

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the domestic market and what is the likely effect on fares if operators now go to the Board and ask for increases to cover the cost of these premiums? Such applications would be allowable within the terms of the White Paper on the Prices and Incomes Standstill and Period of Severe Restraint, paragraph 10 of which says that increases in costs which are the direct result of Government action may be recovered by persons offering goods or services. Therefore, the Board would be quite likely to approve applications for fare increases by the operators. But this is a long-winded process. First, a notice has to be published in the Civil Aviation Licensing Notices. Then time is allowed for objections. Finally, there may be a public hearing and an appeal from the Board's decision to the Minister. I doubt whether airlines operating on domestic

routes could take steps to recover the difference between now and 1st June when the Order comes into operation. There will, therefore, be a temptation when they bring applications up not only to recover the full amount of additional premiums but also the difference in the premiums they have had to pay pending their applications being heard by the Board.

There might be a conflict with the prices and incomes policy during the period of severe restraint, which operates in the first half of 1967, and possibly with any further developments of the policy which may be agreed by Ministers for the second half of 1967. I know that it would be out of order to go into that in detail, but most of us can already see that some form of restraint on prices and incomes will be necessary for a much longer period than the first half of 1967 and this will apply to domestic air fares just as to any other commodity.

I want some indication from the Minister that these factors have been taken into consideration and that he has in mind the possibility of using the powers conferred on the Board of Trade by paragraph 8 of the Order or of deferring the increase in the limit for domestic traffic at least some time beyond the period of the ending of severe restraint, until a definite announcement is made of Government policy for prices and incomes in the second half of the year.

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11.25 a.m.

**Mr. Cranley Onslow** (Woking): Many of my hon. Friends who might otherwise have wished to take part in the debate because of their interest in aviation are unavoidably absent. They are fulfilling an engagement which was fixed before

today's business was announced. That other engagement will enable them to keep themselves informed on important matters in aviation. I mention this because it is an additional example of the disruption and hindrance to the ability of right hon. and hon. Members to deal with other business that the morning sittings have caused.

I have attended all three morning sittings, and I begin to understand, as I hope the Leader of the House has begun to understand, what a severe strain this must be imposing on the House's servants, inside and outside the Chamber, by no means least on Mr. Speaker. I should be glad to know in any case that this is a matter to which the Leader of the House is devoting particular care and attention.

I have a number of points I want to put that my hon. Friends would have wished to have examined. He will understand that my intervention will not be as short as I might otherwise have wished in the circumstances. In so far as the Order represents a move to apply the principles of the Hague Protocol to domestic and non-international carriage, it is a welcome move. It follows, of course, the decision to apply the £6,000 Hague Protocol limit of liability to international carriage by United Kingdom ratification of the Protocol and there is no doubt that the old Warsaw limit of £3,000 had long been outdated.

The Order also has the effect of raising the limit of liability for domestic and non-international carriage from £3,000 to £21,000. On this and on a number of other general and particular points, I should like to put some questions to the Minister, and I hope that he will be able to answer them at the end of the debate.

*Appendix C*
*House of Commons Report*

First, what prior consultation did the Department have with the airline operators, both nationalised and independent, before tabling this Order? The hon. Gentleman will be aware that there has been some criticism in the aviation

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Press of the fact that the Order was brought before Parliament without adequate consultation with or warning of the operators. This way of proceeding is not exactly improving the confidence of airline operators in the sort of treatment they are to expect from the Board of Trade now that it has taken over responsibility for civil aviation matters. Can the hon. Gentleman explain why he has chosen this point of time to raise the non-Convention limit—the limit for domestic and non-international carriage—to £21,000? I recognise that B.E.A. has to some extent forced the pace by—and I quote the word—"voluntarily" agreeing to the terms of the Montreal Agreement of 1966 for all its international services. But I am by no means sure that the introduction of the new £21,000 limit under this Order and at this point in time will help to simplify or clarify matters.

It may be the Minister's view that the £21,000 limit should come to be accepted by all British domestic carriers. But does he feel that he has increased the chances of this by his timing of the Order? Has the Department any powers over British air operators to oblige them to conform in this respect? If so, is it the intention to use such powers? Will he consult the operators before doing so? If he has not got powers to do that, has he any intention of seeking them?

**Mr. Lubbock:** He has them.

**Mr. Onslow:** I hope that the Minister will take up these points because I am not sure that the hon. Member for Orpington (Mr. Lubbock) is right in saying that he has these powers.

Is the Minister aware, further, of the effect of the introduction of the £21,000 limit upon the costs of airline operators? This was mentioned by the hon. Member for Orpington, and it seems—and I have had access to the same sort of figures—that this will cause an increase in insurance premiums which cannot in many cases be absorbed. The remarks of the Board in its report about obligation to make them are open to question and are relevant in this context. It is clear that many operators are up against severe pressure for fare increases and this is likely to be greatest, possibly, in the case of operators whose route pattern is shortest—in other words, which

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have the least revenue per flight and upon which the cost of the increased premiums will represent the greatest percentage increase in costs.

The Minister must recognise that the existing licensing processes would prevent the operators from introducing higher fares until the end of this year, even if they were authorised to do so. This must make it very questionable whether this was the right time or the right way to introduce a new domestic limit. There are some other reasons to which I shall return.

I ask the Minister to clarify the use to which he envisages putting Article 8, which provides for exemptions. Has he any intention of using this to postpone the application of the Order to domestic services for a transitional period, say, until January, 1968, by which time operators might have been able to adjust their tariffs to the increased

premium costs? If so, what procedure does he propose to apply for granting exemptions, and for advertising exemptions when granted?

If it is not his intention to use this Article for that purpose, then for what purpose is it intended? I understand that the Order applies to gratuitous carriage, as well as to carriage for reward, but in the past exemptions have been made in the provisions of existing Acts in favour of *bona fide* flying clubs.

In principle, this clearly makes sense, but the making of exemptions can lead to difficulty if the exemptions are not known. Will the Minister undertake to arrange to publish, in some prominent and accessible place, the details of any exemptions which he may make under Article 8? This is a point which was made forcibly by my hon. Friend the Member for Tiverton (Mr. Maxwell-Hyslop).

There are two other points of detail in the Order. First, can the Minister tell us how the provisions in the Order relating to air mail are to be applied in practice? Clause 4*(b)* of Schedule 1 of the Order applies to the carriage of mail or postal packets and Articles 24 and 30 of the Schedule appear to restrict the rights of action to the consignor or consignee of cargo, as airmail has to be treated. Who, in this context, are the consignor or consignee? Is the consignor the member of the public who sends something



by air mail? If so, evidently some consequential amendments to the Post Office Acts will be needed. Or is the consignor and the consignee the Post Office in each case? If so, then in this respect the Order seems to be useless to the general public, and, indeed, it could have the effect of enabling the Post Office to be entitled, in the case of loss,

to recover more in damages from the airline than they would be obliged to pay out under the very limited international compensation scheme for the senders of air mail. There seems to be the need for clearer drafting. Certainly a definition of who is to be regarded as consignor and consignee would help to reduce the future danger of unnecessary litigation.

On another point of clarity and definition, can the Minister explain some of the terminology which is used on page 12 of the Order under Part B of Schedule 2? Here we have the terms "The amended Convention", "The amended Warsaw Convention", and "The unamended Warsaw Convention", all appearing within the space of five lines, and all apparently intended to mean much the same thing. This seems to be quite unnecessarily confusing. It should surely have been possible to tighten up the draftsmanship and to eliminate this kind of terminological imprecision.

Regarding the overall effect of the Order, the Minister is presumably aware that it will not greatly reduce the number of anomalies which already exist in the limits of liability in individual cases. Different passengers sitting next to each other in the same aircraft may be eligible for quite different limits, depending on the type of their ticket, their point of departure, and their ultimate destination. I hope the Minister will take up this point. I put to him the case of the B.K.S. Airlines flying from Leeds to London. There might be a Mrs. X, a Leeds housewife, on a day trip to London. She would be entitled to a limit of £21,000. A Mr. Y, on a week-end trip to Paris, would be entitled to a limit of £6,000, and Herr Z, returning to Vienna, would be entitled to a limit of £3,000. If, however,

he flies on from London via B.E.A., he would then find that his limit goes up again to £21,000.

This seems to be a confusing situation, and it certainly emphasises the importance of securing greater interna-

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tional standardisation, as well as domestic standardisation. Does not this in itself make it premature for the United Kingdom to have introduced the £21,000 limit domestically and for non-Convention carriage in advance of international agreement?

Can we possibly support a lower limit of liability internationally, and, if not, does this not make it difficult to enable us to enter into any future diplomatic conference with any room for manoeuvre? Will not our commitment to the £21,000 limit make it difficult to persuade other nations to accept the existing Conventions and Protocol? There are still over 30 nations involved in international air transport which are parties to none of these agreements.

Why did the Government decide to introduce this Order before the meeting of the I.C.A.O. panel of experts in Montreal, and what instructions were given to the British member of that panel? I should probably be out of order if I were to probe too far into the Government's ideas for future progress towards a long-term solution of the problem of keeping the Warsaw Convention up to date. What is it in the idea of a new convention which so attracts the Minister? Would it not have been possible and better to proceed by way of modification of the existing inter-carrier agreements such as that of May, 1966?

No doubt the Minister will be aware of the complications which may arise from the case of Lisi v. Alitalia, mentioned by my hon. Friend the Member for Harrow, Central

(Mr. Grant). I hope the Minister will be particularly careful to say what action he sees as being necessary if that case is not reversed on appeal.

Finally, in the timing of the Order, and in what I regard as the premature commitment to the £21,000 limit, there seems to be a strong suggestion that the Government are meekly following the lead of the United States. It was the threat of unilateral action by the American Government, almost amounting to an ultimatum, which forced airlines to accept last year's Montreal agreement. It seems to some people that we are again capitulating without protest to pressure from across the Atlantic. We know that that pressure may well be renewed in future. While there may well be arguments for working in an orderly and sensible

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way towards a domestic limit for carriage by air liability which corresponds to the railways limit, as the hon. Member for Tiverton pointed out—and which domestic carriers might ultimately accept if they were properly consulted—I hope that the Minister will assure us that he sees his Department's functions in this respect as being to promote international order rather than, as it appears in some respects at this moment, international chaos.

11.39 a.m.

**Mr. J. P. W. Mallalieu:** On the last point which the hon. Gentleman the Member for Woking (Mr. Onslow) made, we are most anxious to try to get international order. I agree with him that some of the immediate results of this Order will be to increase the anomalies. We are doing all we can to get a full international agreement, and we shall continue to press for that in the hope of ironing out some of the anomalies which still exist.

The hon. Gentleman, as well, as his hon. Friend, the Member for Harrow, Central (Mr. Grant), raised the highly technical, but very important, point about the law case Lisi v. Alitalia. I understand that there is a likelihood of an appeal to the United States Supreme Court against the decision of the lower court. The fact that there is dubiety about this is no reason for not proceeding with The Hague Protocol, because a decision in this particular case, as and when it comes, will not affect very large numbers of the routes which The Hague Protocol covers. This Lisi case is being watched by the British Government and the experts of the International Civil Aviation Organisation are watching it with the greatest care. Depending on what the final decision is, we shall have to decide then what action we can take. I am grateful to hon. Members for raising this matter which is clearly of great importance.

The hon. Member for Tiverton (Mr. Maxwell-Hyslop), the hon. Member for Woking, the hon. Member for Orpington (Mr. Lubbock) and others were concerned about Article 8 and the exemptions which we might be considering. We have no intention whatever of giving widespread exemptions under this Article. All commercial flying, both scheduled and non-scheduled, will be subject to the provi-



sions of the Order. As I said earlier, the exemptions which we have in mind are for *bona fide* flying clubs and the movement of troops. The ordinary business of the airlines will not be exempted in any way.

The hon. Member for Tiverton made an interesting comment about clocks in the insurance slots showing the wrong time. That is obviously important, but it is something which is not covered by the Order. However, I shall make a point of calling the attention of the various airport

authorities to it to make sure that these clocks are kept up to time.

The hon. Member for Orpington asked whether the Order covered passengers on their way from a terminal to an airport. I am advised that it does not. It deals with accidents in the plane, or when actually loading or unloading the plane, but not in the bus. I should imagine that that would be a matter for a separate contract.

The Government have recognised, as they must, that insurance costs will go up and that applications for increases in domestic fares may result. This will be considered by the Air Transport Licensing Board which has some obligation to consider increases in the light of the Government's prices and incomes policy. I do not myself want to make any pronouncement on that, because, I understand, I might be called upon to make a final decision on such applications and it would be altogether wrong for me to pre-judge them.

**Mr. Onslow:** The hon. Gentleman says that he regards the A.T.L.B. as having some obligation to have regard to the Government's prices and incomes policy. Does it have any statutory duty to do so?

**Mr. Mallalieu:** I understand that it does.

There were several consultations between the Board of Trade and the operators, B.O.A.C., B.E.A., B.I.A.T.A. and insurance interests. I cannot pretend that there was absolutely unanimous agreement, for there was not. It was agreed that the limit should be raised, but there was disagreement about the exact figure. We tried to pick what we thought was the most sensible figure and that most likely to be adopted internationally.

*Appendix C*
*House of Commons Report*



We have no present power to compel British operators to conform to the £21,000 limit and we are not proposing to seek such power at present. We intend to wait until the international negotiations are complete. A number of fairly detailed questions have been asked and I will make a point of writing to the hon. Members concerned.

In general, the House has given a welcome to the Order and I in turn give the assurance that this is not just a once-and-for-all settlement of the matter. It must be kept continually under review in view of the law cases and possible changes in the value of money and so on. We give an assurance that that will be done and in the light of that assurance I hope that the House will now agree to accept the Order.

*Question put and agreed to.*

*Resolved,*

That the Carriage by Air Acts (Application of Provisions) Order 1967, a draft of which was laid before this House on 7th December, be approved.